

# Chapter 33

## ALLOCATION OF DEVELOPMENT

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33.0 Purpose: This chapter sets forth the requirements for regulating the rate and timing of growth within the region. In conjunction with other provisions of this Code and the Goals and Policies, this chapter, through issuance of allocations, distributes, in an orderly fashion, growth and development within the confines of attainment and maintenance of the environmental thresholds. An allocation issued pursuant to this chapter does not give the recipient thereof a right to develop a project.

33.1 Applicability: No person shall construct a project or commence a use or activity, which requires an allocation unless an allocation is obtained in accordance with this chapter; the parcel is eligible to use an allocation; and the project is approved by TRPA. For purposes of this chapter, where the term "existing" is used it shall not include structures or facilities that have become derelict. (See Chapter 2.)

33.2 Allocation Of Additional Residential Units: TRPA shall allocate the development of additional residential units as follows:

33.2.A Requirement Of Allocation<sup>§</sup>: No person shall construct a project or commence a use, which creates one or more additional residential units, without first receiving an allocation approved by TRPA. This requirement does not apply to affordable housing units approved after January 1, 1986, but shall apply to conversions of such affordable housing to nonaffordable status. In order to construct the project or commence the use, to which the allocation or the exemption therefrom pertains, the recipient of the allocation or exemption shall comply with all other applicable provisions of this Code.

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<sup>§</sup> Amended 12/18/02

- (1) Applicable Residential Uses: The following residential uses referred to in Chapter 18 contain residential units: secondary residences; employee housing; mobile home dwellings; multiple family dwellings; multi-person dwellings; nursing and personal care facilities; residential care facilities; single family dwellings; and summer homes.
- (2) Definition Of "Additional Residential Unit": Residential unit is defined in Chapter 2. A residential unit is considered "additional" if it is to be created pursuant to a TRPA approval issued on or after January 1, 1986. The conversion of an existing nonresidential use to a residential use constituting a residential unit is an additional residential unit requiring an allocation under this chapter. The following are not "additional" residential units:
  - (a) The reconstruction or replacement, on the same parcel, of a residential unit legally existing on or approved before January 1, 1986;
  - (b) The reconstruction or replacement, on the same parcel, of a residential unit which was allocated and approved pursuant to this Code;
  - (c) Legally established additions and accessory uses to an existing residential structure, that do not create additional residential dwelling units;
  - (d) A residential unit constructed on a foundation, the use of which is authorized by Chapter 11.
  - (e) The relocation of residential units legally existing on January 1, 1986, other than mobile home dwellings, through a transfer approved by TRPA;
  - (f) The relocation of a legally established mobile home dwelling with existing water, sewer, and electrical services to a mobile home development or to a multi-family dwelling of five units or more, pursuant to a transfer approved by TRPA;<sup>1</sup>
  - (g) An existing, legally established mobile home pad with water, sewer and electrical services, whether or not a mobile home is located thereon; or<sup>2</sup>
  - (h) One or more new residential units permitted by TRPA prior to February 24, 2010, provided that;<sup>3</sup>
    - i. Applications is made to TRPA prior to the expiration of the permit, as determined in Section 4.9, to re-issue a permit for a project for which an allocation(s) was assigned;
    - ii. All permit conditions, fees, securities, building and site design conditions of approval, plan revisions, and other requirements of the original permit, are updated to meet

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<sup>1</sup> Amended 2/24/2010

<sup>2</sup> Amended 2/24/2010

<sup>3</sup> Added 2/24/2010

the requirements of the Code and all other applicable TRPA ordinances, rules, or regulations at the time of permit re-issuance; and

iii. Subparagraph 33.2.A(2)(h) has not previously been used in relation to the same project.

(3) Maximum Number Of Units And Distribution Of Allocations Among Jurisdictions: <sup>§</sup>From January 1, 2002 to December 31, 2006 a maximum of 1,475 additional residential units may be authorized to receive permits for construction. <sup>§§</sup>Commencing on January 1, 2007, the maximum number of allocations that may be authorized to receive permits for construction from the allocation Pool will be determined in accordance with Goal and Policies Implementation Policy II. The allocation and distribution of allocations each year shall not exceed the following yearly maximums:

MAXIMUM YEARLY ALLOCATIONS <sup>§</sup>		
YEAR	2002	Post 2002 <sup>§§</sup>
EL Dorado County	92	111
City of SLT	38	47
Placer County	88	66
Washoe County	59	49
Douglas County	22	21
TOTAL	299	294

(a) A total of 1400 additional multi-residential development rights shall be available<sup>§§</sup> as bonus units in conjunction with transfer of development rights and/or other TRPA incentive programs designed to attain the goals and objectives of this Plan. Multi residential units shall be subject to the foregoing allocation limitations.

(b) <sup>§§</sup>Unused allocations from 1987-1996 shall be assigned to the allocation pool. The 236 unused allocations from 1997 to 2002 shall also be assigned to the allocation pool on January 1, 2007. Beginning January 1, 2002, those allocations earned by local jurisdictions through the Performance Review System and unused by December 31 are returned to the Allocation Pool. . Beginning January 1, 2009 and until adoption of the Regional Plan update, local jurisdictions may elect to retain those allocations earned through the annual performance review process and unused by December 31<sup>st§§§</sup>

(c) Allocations assigned to the City of South Lake Tahoe and the STPUD service area within El Dorado County may be assigned to parcels within either jurisdiction provided the

<sup>§</sup> Amended 12/18/02  
<sup>§§</sup> Amended 10/25/06  
<sup>§</sup> Amended 12/18/02  
<sup>§§</sup> Amended 10/25/06  
<sup>§§§</sup> Amended 7/22/09

sending jurisdiction approves the reassignment. Such reassignment shall not be considered an allocation transfer.

- (d) Allocations shall not be distributed to a local jurisdiction if TRPA determines, based on reliable facts, that the jurisdiction lacks sufficient water or sewer capacity to serve new residential development. If the jurisdiction demonstrates to TRPA's reasonable satisfaction that there is sufficient capacity, the TRPA shall distribute the affected allocations to the jurisdiction.
  - (e) In the event a lack of water and sewage capacity results in an imbalance of allocations to a jurisdiction, a program to recognize the imbalance shall be developed if capacity becomes available.
- (4) Allocation Pool: At the beginning of each year, unused allocations from the previous year shall be assigned to an allocation pool administered by TRPA.<sup>§</sup> Beginning January 1, 2009 and until adoption of the Regional Plan update, local jurisdictions may elect to retain those allocations earned through the annual performance review process and unused by December 31<sup>st</sup>.~~§§§§~~
- (a) TRPA may assign allocations to parcels throughout the Region providing the recipient retires a sensitive parcel within the Region.
  - (b) TRPA may assign up to, but not exceed 200 allocations to parcels throughout the Region provided the local jurisdiction maintains a Certified Local Government Moderate Income Housing Program as described in 35.2.G. <sup>§</sup>
  - (c) ~~§§§§~~ Repealed.
  - (d) ~~§§§§~~ TRPA may assign allocations to local jurisdictions earned under Subsection 33.2.B(5).

33.2.B Distribution And Administration Of Residential Allocations: Residential allocations shall be distributed and administered in accordance with the Goals and Policies, this Code, and the Rules of Procedure.

- (1) Distribution of Annual Allocations: Distribution of allocations for 1993 and beyond shall be by a method or system which permits the participation of parcels with scores below the numerical level defining the top rank in the applicable jurisdiction.
  - (a) TRPA shall reserve ten percent of each jurisdiction's annual allocations for distribution to parcels below the IPES line. The reserved allocations shall be distributed by a method of random selection by TRPA. A county or city may elect to

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<sup>§</sup> Amended 4/28/04  
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distribute the reserved allocations, or may be exempt from the set-aside requirement, provided TRPA finds the substitute system or the city/county distribution system, as the case may be, provides an equal or superior opportunity for participation of parcels below the IPES line.

- (b) Allocations distributed by TRPA under this subsection may either be transferred or returned to TRPA for reissuance to the jurisdiction of origin. Unclaimed reserved allocations after June 1, shall be given to the appropriate jurisdiction for issuance.<sup>§§</sup>
  - (c) (Deleted)<sup>§§§</sup>
  - (d) Upon transfer of a reserved allocation, a complete application for an additional residential unit shall be filed no later than December 31, of the year in which it was distributed. Failure to submit a complete application for a transfer by June 1, of the year in which it was distributed, or to file a complete application for a new residential unit by December 31, of the year in which it was distributed, shall result in the forfeiture of the allocation to the jurisdiction of origin.
- (2) Distribution of the Allocation Pool: TRPA shall distribute allocations from the allocation pool as follows:
- (a) Owners of eligible parcels may apply to TRPA on a first-come, first-serve basis for available allocations in the allocation pool.
  - (b) Owners of parcels located within jurisdictions that maintain a Certified Local Government Moderate Income Housing Program as described in 35.2.G, may apply to TRPA on a first-come, first-serve basis for available allocations in the allocation pool.<sup>§</sup>
  - (c) Allocations received under the Certified Local Government Moderate Income Housing Program are not limited to areas designated for the Multi-residential Incentive Program.<sup>§</sup>
  - (d) <sup>§§</sup> After 2006, Annual Allocations distributed pursuant to Subsection 33.2(1) shall be assigned from the Allocation Pool.
  - (e) <sup>§§</sup> Annual Allocations, sensitive lots retirements and moderate-income housing allocations shall be made available on a first-come, first-served basis. Should the number of allocations in the Allocation Pool be reduced such

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<sup>§§</sup> Amended 12/18/02

<sup>§§§</sup> Amended 4/27/05

<sup>§§§§</sup> Amended 7/22/2009

<sup>§</sup> Amended 4/28/04

<sup>§§</sup> Amended 10/25/06

that the minimum number of Annual Allocations pursuant to the Performance Review System is not available, the number of allocations issued to each jurisdiction shall be prorated. If the Allocation Pool is exhausted, no further allocations will be distributed from the pool.

- (3) Distribution Requirements: Distribution of allocations, within the limits set in Subsection 33.2.A and consistent with subparagraph (1) above, shall be determined by the counties and city. If any county or city chooses not to distribute allocations within its jurisdiction, then TRPA shall distribute the allocations pursuant to an allocation system adopted by TRPA.
- (a) Each county and the city shall notify TRPA, in writing, of its election to not distribute allocations for a given year or years. Notification must be received by TRPA no later than December 31 of the preceding year. The Governing Board may waive this deadline for good cause.
- (b) TRPA shall deliver allocations to the counties and city no later than January 15, of the year for which the allocations are reserved, or within 15 days of the effective date of an ordinance providing for residential allocations for that year, whichever is later.
- (c) Delivery of allocations shall be accomplished by providing each county and city with the number of allocation forms which corresponds to the allocations available to each county and city in that year. The counties and city shall determine the receiving parcels pursuant to their respective allocation systems and shall indicate the assessor's parcel number (APN) of the receiving parcel on the allocation form. The counties and city shall provide TRPA with a list of assessor parcel numbers which received an allocation. The original allocation forms shall be delivered to the owner of record of the receiving parcel and shall, in addition to the list, constitute evidence of receipt of an allocation.
- (d) TRPA shall number each allocation as follows:
- (i) The first set of letters shall signify the county or city of origin (e.g., WA, DG, PL, EL, SLT);
  - (ii) The first set of numbers shall signify the year of issuance (e.g., 87, 88, 89, 90, 91);
  - (iii) The second set of letters shall signify the type of allocation (e.g., O for original, R for reissued, LS for litigation settlement, AP, allocation pool);
  - (iv) The second set of numbers shall signify the sequence of the allocation (e.g., for Douglas County the sequence will be 1 through 23).
- (Example PL - 87 - R - 56;County-Year-Type-Number)

- (e) The counties and city shall notify each owner of a parcel receiving an allocation.
  - (f) In the event an allocation is returned or forfeited for any reason, the county or city shall notify TRPA by returning the original allocation form and requesting a reissued allocation for assignment to another parcel. If the original allocation form cannot be returned to TRPA, the county or city shall notify TRPA of the reason therefor, and the allocation shall be cancelled by depositing in the U. S. Mail, first class, postage prepaid, a notice of cancellation addressed to the last known address of the owner of the receiving parcel.
  - (g) TRPA shall adopt a Revised Fertilization Management Program in accordance with section 81.7 and the recommendations of the 2001 Threshold Evaluation, prior to the release of 2003 residential allocations. <sup>§</sup>
- (4) Administration: An allocation shall entitle the owner of the receiving parcel to either apply for a TRPA permit to construct an additional residential unit or to transfer the allocation to another parcel pursuant to Chapter 34. Distribution of, and other transactions concerning allocations, shall be tracked, accounted for and otherwise treated in accordance with Chapter 38.
- (a) Upon receipt of the allocation form from the county, TRPA, or city, the owner of the parcel may file an application with TRPA to either construct a residential unit or transfer the allocation. Failure to either file a complete application or complete a transfer by the deadlines set in subparagraphs (b) and (c) below, shall result in the forfeiture of the allocation to the county, TRPA, or city of origin.
  - (b) Except as set forth in Section 33.2.C, Multi-Residential Allocations, and sub paragraph (d), below, complete applications for construction of additional residential units shall be filed with TRPA no later than December 31 of the year in which the allocation was distributed.
  - (c) Transfer of allocations shall be complete no later than December 31, of the year in which the allocation was distributed. Transfers of allocations shall be deemed complete when the applicant has received a TRPA notice of eligibility for the transfer, the conditions of transfer have been fulfilled, and the original allocation form has been signed by the owners of the transferor and transferee parcels, the county or city which issued the allocation, and TRPA. The signatures of the receiving and sending county or city shall be required for intercounty transfers.
  - (d) Upon transfer of an allocation, a complete application for an

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<sup>§</sup> Amended 12/18/02  
<sup>§§</sup> Amended 7/22/09

additional residential unit shall be filed no later than June 1 of the year after the issuance of the allocation. Failure to file a complete application by June 1 shall result in the forfeiture of the allocation to the city or county of origin.

- (e) All unused allocations previously distributed to each jurisdiction as of January 1 of each year shall be assigned to the allocation pool. Potential allocations not earned pursuant to (5) below do not exist and shall not be placed in the allocation pool. §§ Beginning January 1, 2009 and until adoption of the Regional Plan update, local jurisdictions may elect to retain those allocations earned through the annual performance review process and unused by December 31<sup>st</sup>.

(f)

- (5) Performance Review System<sup>§</sup>: Starting January 1, 2003, each jurisdiction shall receive a base allocation according to the Allocation Performance Table below. The base allocation may be enhanced or reduced incrementally according to subparagraphs (a) through (g) below. After the submittals for the 2003 allocations, annual submittals will be due October 1, 2003, and every year thereafter, the Performance Review Committee (PRC) shall review the performance of the local jurisdictions and TRPA. The review committee shall consist of representatives of the participating counties, City and TRPA and shall review the performance criteria contained in subparagraphs (a) through (g) below. TRPA may establish guidelines to establish consistent evaluations and/or audits for (a) through (g) to assist the Performance Review Committee's review. No jurisdiction shall receive more allocations than the maximum or fewer allocations than the minimum allocations for that jurisdiction shown in the Allocation Performance Table below. §§ When the total number of allocations available for distribution are fewer than the number shown in the Allocation Performance Table below, TRPA shall apply the Performance System proportionality to the remaining allocations.

ALLOCATION PERFORMANCE TABLE					
Jurisdiction	Minimum Allocation with Deductions	Deduction Increments	Base Allocation	Enhancement Increments	Maximum Allocation with Enhancements
Douglas	9	-1	13	1	21
Washoe	13	-3	25	3	49
El Dorado	27	-7	55	7	111
CSLT	11	-3	23	3	47
Placer	18	-4	34	4	66
Total	78		150		294

Note: One deduction or enhancement increment equals the number of allocations shown for individual jurisdictions.

- (a) Permit Monitoring and Compliance: Starting October 1,

§ Amended 12/18/02  
 §§ Amended 07/22/09

2002, TRPA shall conduct a representative sample audit of residential permits issued, and compliance inspections performed the prior year, by the counties, City, and TRPA. A passing score of 70% for both permit monitoring and tracking is expected. The base allocation shall be enhanced or reduced as follows:

- (i) A jurisdiction shall receive one increment of enhancement for a 75% to less than 90% score for both the project review portion and the compliance portion of the audit, or
  - (ii) A jurisdiction shall receive two increments of enhancement for scores 90% or greater for both the project review portion and the compliance portion of the audit, or
  - (iii) A jurisdiction shall be penalized one increment of deduction for audit scores below 65%.
- (b) EIP Implementation 2003: TRPA must receive from each jurisdiction, a Water Quality and Air Quality EIP Project list (EIP Component List) that includes project components and their schedule of completion for years 2003-07, in addition to a Maintenance Efficiency Plan (MEP) for water quality project maintenance by October 2002. The base allocation shall be enhanced or reduced as follows:
- (i) A jurisdiction shall receive one increment of enhancement for TRPA approval of the EIP Component List and MEP, and
  - (ii) A jurisdiction shall receive one increment of enhancement for achievement of 71–100% of permitted projects for the yearly CIP performance target in implementation of the local jurisdictions Water Quality CIP/EIP 2000-05 list previously submitted in 2000, or
  - (iii) A jurisdiction shall be penalized one increment of deduction for not submitting and gaining TRPA approval of the EIP Component List and MEP.
- (c) §EIP Implementation 2004 and beyond: TRPA must receive and approve an updated 5 year EIP Component List for years 2006-2011, in addition to a Maintenance Efficiency Plan (MEP) by the October prior to the allocation year. The base allocation for years 2004 and beyond shall be enhanced or reduced as follows:
- (i) A jurisdiction shall receive one increment of enhancement for a 71-100% completion of project component scores for the EIP Component List, or
  - (ii) A jurisdiction shall receive two increments of enhancement for performance greater than 100% completion of project component scores for the EIP

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<sup>§</sup> Amended 10/25/06

Component List, or

- (iii) A jurisdiction shall be penalized one increment of deduction for performance 50% below completion of project component scores for the EIP Component List, or not having an approved EIP Component List and MEP.
- (d) BMP Retrofit Implementation 2003: TRPA shall establish BMP Retrofit Targets for 2003-06 for all parcels in need of retrofit by jurisdiction. The minimum targets for parcels retrofitted/parcels in need of retrofit shall be 5 percent for FY 02-03, 25% for FY 03-04, 65% for FY 04-05, and 85% for FY 05-06. The base allocation shall be enhanced or reduced as follows:
- (i) A jurisdiction shall receive one increment of enhancement for developing a TRPA approved program to assist the implementation of the BMP retrofit targets, and
  - (ii) A jurisdiction shall receive a second increment of enhancement for adopting a TRPA approved program and demonstrating an adequate resource commitment based on the annual target (e.g. funding, staff resources) to the program to assist in the implementation of BMP retrofit targets, or
  - (iii) A jurisdiction shall be penalized one increment of deduction if baseline targets for BMP retrofit are not established by October 31, 2002.

- (e) §BMP Retrofit Implementation 2004 and beyond: The base allocation for years 2004 and beyond shall be enhanced or reduced as follows:
- (i) A jurisdiction shall receive one increment of enhancement for maintaining the jurisdiction specific BMP Retrofit Implementation program and making progress toward meeting established targets equal to 50% to 100% compliance, or
  - (ii) A jurisdiction shall receive two increments of enhancement for greater than 100% compliance with the established annual retrofit targets for implementation of BMPs for years 2003<sup>st</sup> and beyond, or
  - (iii) A jurisdiction shall be penalized one increment of deduction for not maintaining the jurisdiction's specific BMP Retrofit Implementation program or not making progress toward meeting established targets.
- (f) Transit Level Of Service 2003: TTD, in consultation with TRPA staff, shall establish baseline Transit Level of Service (TLOS) for each jurisdiction as well as establish targets for improving the TLOS for 2004-06 as set forth in the TLOS Guidelines Handbook. Failure to comply will be deducted from the next year's allocation. The 2003 base allocation shall be enhanced or reduced as follows:
- (i) A local jurisdiction shall receive one increment of enhancement for committing by letter of intent/resolution to increasing FY 2003-04 total transit operating funds by at least 5% above FY 2002-03 total funding levels for project(s)/program(s) to improve TLOS selected from TRPA/TTD adopted transportation plans. The TTD shall provide input regarding these projects(s)/program(s). Washoe County shall work with the Washoe County Regional Transportation Commission for the purpose of securing additional funding. The funding source and project(s)/program(s) shall be for the purpose of improving TLOS and agreed to by the PRC, or.
  - (ii) A local jurisdiction shall receive two increments of enhancement for committing by letter of intent/resolution to increasing FY 2003-04 total transit operating funds by at least 10% above FY 2002-03 total funding levels for project(s)/program(s) to improving TLOS selected from TRPA/TTD adopted transportation plans. The TTD shall provide input regarding these project(s)/program(s). Washoe County shall work with the Washoe County Regional Transportation Commission for the purpose of securing additional funding. The funding source and project(s)/

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<sup>§</sup> Amended 10/25/06

program(s) shall be for the purpose of improving TLOS and agreed to by the PRC, or

- (iii) A jurisdiction shall be penalized one increment of deduction for any decrease in FY 2003-04 total transit operating funding levels below that from FY 2002-03 if it results in a decrease in TLOS.
- (g) Transit Level Of Service <sup>§§§</sup>2004 and beyond: The base allocation for years 2004 and beyond shall be enhanced or reduced, with recommendation from the TTD, as follows:<sup>§§</sup>
- (i) A jurisdiction shall receive one increment of enhancement for improving the previous year's three<sup>§§</sup> of nine of the TLOS criteria by 5-10% as determined by the jurisdiction specific TLOS Criteria Matrix in the TLOS Guidelines Handbook, or
  - (ii) A jurisdiction shall receive two increments of enhancement for improving the previous year's five of nine TLOS criteria by greater than 5%<sup>§</sup>, as determined by the jurisdiction specific TLOS Criteria Matrix in the TLOS Guidelines Handbook, or
  - (iii) In the event a jurisdiction does not qualify for either increment of enhancement but improves a minimum of one (1) TLOS criteria by at least 5% under subsection (g)(i), or three (3) criteria by at least 5% under subsection 33.2.B (5)(g)(ii), a jurisdiction can qualify for an initial or second increment if other measurable commitments to transit (listed below), approved by TRPA and TTD at least one (1) year in advance, are met. Other measurable commitments to transit that may increase ridership include, but are not limited to, one or more of the following: expenditure of new transit funds on transit, development/ implementation of a parking management plan, establishment of a regional or local revenue source to fund transit operations, establishment/extension of inter-jurisdictional service, provide transit passenger incentives such as free fares, implementation of new transit marketing and/or promotional programs.
  - (iv) A jurisdiction shall be penalized one increment of deduction for a 5% or greater decrease in the previous year's four of nine TLOS criteria as determined by the jurisdiction specific TLOS Criteria Matrix.
- (6) Monitoring Requirement: TRPA hereby establishes a monitoring fee of \$100<sup>§</sup> which shall be collected by the entity issuing the allocation from each allocation recipient. The fee shall be used to monitor water quality impacts and permit conformance.

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<sup>§§§</sup> Amended 10/25/06

<sup>§§</sup> Amended 05/28/03

<sup>§</sup> Amended 7/24/02

33.2.C Multi-Residential Allocations: A portion of the residential allocations set forth in subparagraph 33.2.A(3) may be reserved for multi-residential use. These reserved allocations shall be used for the Multi residential Incentive Program established in Chapter 35 and in connection with transfer of development rights pursuant to Chapter 34.

- (1) Reservation Pool: On a yearly basis, a pool of allocations representing the desired level of multi-residential development for a given jurisdiction may be established by TRPA after consultation with such jurisdiction. Allocations assigned to the pool shall be within the limitations of the Allocation Table set forth in Sub paragraph 33.2.A(3). Unused allocations may be carried over to the next year's pool.
- (2) Allocations For Multi-Residential Projects: Except for allocations obtained by transfer pursuant to Chapter 34, or obtained directly as provided in Subsection 33.2.B, allocations for multi residential projects shall be made upon project approval. Previously issued allocations or a letter from the appropriate county or city indicating allocations are available from the reservation pool or have been reserved from a future year's allocation, shall be required as part of the project application. TRPA may review multi-residential projects for which allocations are reserved from future years except that project approval shall be limited to units for which allocations are available at the time of approval. Projects may receive bonus units prior to project approval pursuant to Chapter 35.

33.3 Allocation Of Additional Commercial Floor Area: TRPA shall allocate the development of additional commercial floor area as follows:

33.3.A Requirement Of Allocation: No person shall construct a project or commence a use, which creates additional commercial floor area, without first receiving an allocation approved by TRPA. In order to construct the project or commence the use, to which the allocation pertains, the recipient of the allocation shall comply with all other applicable provisions of this code.

- (1) Applicable Commercial Uses: The commercial uses set forth in Chapter 18 contain commercial floor area. The allocation of additional commercial floor area pursuant to this chapter also applies to commercial activities that are not primary commercial uses, except that accessory uses as to which TRPA makes the following findings shall be deemed not to contain additional commercial floor area:
  - (a) The accessory use meets all criteria specified by Chapter 18 for an accessory use; and
  - (b) The accessory use is designed to serve the noncommercial primary use, as determined by reference to the following criteria:

- (i) There is no separate entrance for the accessory use;
  - (ii) The accessory use is compatible with the size and patronage of the primary use;
  - (iii) The accessory use does not rely on separate parking;
  - (iv) The accessory use is not separately advertised;
  - (v) The use season of the accessory use corresponds to that of the primary use;
  - (vi) The accessory use does not generate additional vehicle trips; and
  - (vii) In applicable instances, the accessory use is principally for service or repair rather than sales. The following are examples of accessory uses of a commercial nature not subject to the allocation of additional commercial floor area: ski rental shops in ski areas; gift shops in airports; tackle shops used by patrons of marinas; newsstands in motels; pro shops at golf courses; and cafeterias in hospitals.
- (2) "Additional" Commercial Floor Area: Commercial floor area is considered "additional" if it is to be created pursuant to a TRPA approval issued on or after January 1, 1987.
- (a) Additional commercial floor area includes, but is not limited to, the following:
    - (i) The construction of commercial floor area, which did not exist before January 1, 1987; or
    - (ii) Conversion of legally existing or approved floor area from noncommercial use to commercial use.
    - (iii) The construction of, or conversion to, floor area that is primarily utilized for commercial enterprise regardless if it is classified as public service or is publicly owned, except when such floor area is for an accessory use excluded in Subsections 33.3.A(1)(a) and (b) or such floor area is excluded by Subsection 33.3.A(2)(b).
  - (b) Additional commercial floor area excludes the following:
    - (i) Changes in commercial use per se, not involving any increase in commercial floor area;
    - (ii) Additions to, or expansions of, legally existing commercial floor area of 500 square feet or five percent of the existing commercial floor area, whichever is less, provided the existing structure and any subsequent additions or expansions physically exist and were completed at least one year prior to an application pursuant to this subparagraph, the exempt addition or expansion is not applied for or built in conjunction with any other addition or expansion, there is no change in use, any increase in traffic is in

significant as defined in Chapter 93, the exempt addition or expansion occurs within a single project area and the exempt addition or expansion does not occur within the same project area more frequently than once every ten years;

- (iii) The relocation, replacement or reconstruction on the same parcel of commercial floor area, which either existed as of January 1, 1987, or which contains floor area allocated and approved pursuant to this Code;
  - (iv) The replacement, reconstruction or relocation of commercial floor area legally existing as of January 1, 1987, pursuant to a TRPA-approved redevelopment plan;
  - (v) The TRPA-approved transfer of legally existing commercial floor area;
  - (vi) The construction of floor area associated with a publicly owned assembly and entertainment facility with a fire rated capacity of less than 1,100 people; or
  - (vii) <sup>4</sup> New commercial floor area permitted by TRPA prior to February 24, 2010, provided that:
    - A. Application is made to TRPA prior to the expiration of the permit, as determined in Section 4.9, to re-issue a permit for a project for which an allocation was assigned;
    - B. All permit conditions, fees, securities, building and site design conditions of approval, plan revisions, and other requirements of the original permit, are updated to meet the requirements of the Code and all other applicable TRPA ordinances, rules, or regulations at the time of permit re-issuance; and
    - C. Subparagraph 33.3.A (2)(b)(vii) has not previously been used in relation to the same project.
- (3) Allocations to Sensitive Lands: Allocations of commercial floor area to projects located in land capability districts 1, 2, 3, or SEZ shall not be permitted unless:
- (a) The allocation is matched by a transfer from an equal or more sensitive land capability district at a ratio of one square foot of commercial floor area allocation to two square feet of transferred commercial floor area; or,
  - (b) The parcel receiving the allocation is in an adopted community plan where one or more SEZ restoration projects have been completed and the local jurisdiction has submitted a CIP list pursuant to the residential allocation

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<sup>4</sup> Added 2/24/2010

requirements in subparagraph 33.2.B(5).

33.3.B Definition And Calculation Of Commercial Floor Area: Square footage of commercial floor area shall be calculated by reference to the gross square footage of floor area within the outer wall of a commercial building, not including stairwells and airshafts. The square footage of other facilities relating to such building, including but not limited to, decks, which are designated for commercial use under a permit, shall be considered commercial floor area. Square footage for the following shall not constitute commercial square footage:

- (1) Parking areas, driveways, parking structures, outside stairways and walkways;
- (2) Accessory uses determined by TRPA not to contain additional commercial floor area pursuant to subparagraph 33.3.A(1);
- (3) Temporary projects pursuant to Chapter 7.
- (4) The area of play in an indoor tennis court, the area of water in an indoor swimming pool and the area for skating in an indoor roller or ice skating rink, provided these are the permanent primary uses.
- (5) Commercial square footage allocated or transferred, to a project in a designated preferred industrial area may be doubled if the area has implemented area-wide Best Management Practices (BMPs), or the local government of jurisdiction has committed to implement area-wide BMPs on its five-year CIP list submitted to TRPA. Transfers of commercial floor area out of a preferred industrial area shall be reduced by 50 percent unless the floor area was acquired through a TRPA-approved transfer on a 1:1 ratio or through a community plan allocation system. Transfers and relocations of commercial floor within a preferred industrial area shall be at a one-to-one ratio.

33.3.C Maximum Amount And Distribution Of Allocations For Additional Commercial Floor Area For Years 1987 To 1996 And <sup>§§</sup> And Beyond: A maximum of 400,000 square feet of additional commercial floor area may be permitted from January 1, 1987 to December 31, 1996, except as set forth in subparagraph (3) below. The allocation and distribution of this floor area shall be as follows:<sup>§</sup>

- (1) Within Community Plans: From January 1, 1987 to December 31, 1996, except as set forth in sub paragraph (3) below, the maximum amount of additional commercial floor area allocated to community plan areas is 376,340 square feet.
  - (a) Administration: The 376,340 square feet of additional commercial floor area shall be allocated by TRPA,

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<sup>§§</sup> Amended 10/25/06

<sup>§</sup> Amended 8/26/98

distributing 286,340 square feet initially to the local jurisdictions. The 286,340 square feet shall be assigned to community plans pursuant to (i) below. TRPA shall retain 54,000 square feet in reserve as bonus square footage to be assigned to community plans upon their adoption pursuant to (ii) below. TRPA shall retain 36,000 square feet for approval of commercial projects prior to adoption of community plans. The foregoing allocations, including the division of the 286,340 square feet among local jurisdictions, are reflected in the following table.

COMMERCIAL FLOOR AREA ALLOCATIONS  
WITHIN COMMUNITY PLAN AREAS ("CP")

Jurisdiction	Initial Allocation to CPs (75%)	Bonus Adopted CPs (15%)	Before CP Adoption (10%)	Total
So. Lake Tahoe/EI	79,100			
Dorado County				
Placer County	112,500			
Washoe County	55,990			
Douglas County	38,750			
<b>Total Square Feet</b>	<b>286,340</b>	<b>54,000</b>	<b>36,000</b>	<b>376,340</b>

(i) Initial Allocation: TRPA shall distribute the initial allocation of additional commercial floor area to a community plan by taking into consideration such factors as demonstrated need, the expected ability to achieve or maintain environmental thresholds, the reasonableness of projected time schedules, the degree of certainty for obtaining the needed funds for implementation, compatibility with other community plans, and other relevant factors. The amount initially allocated shall be from the 75 percent portion designated for local jurisdictions for planning purposes as shown in the above table in the first column. TRPA has reviewed a sufficient number of proposed community plans to adequately assess the cumulative impacts of development and proposed mitigation, TRPA shall distribute any remaining or additional commercial floor area retained pursuant to Subsection 33.3.C(1)(a). This distribution shall reward those community plans which best demonstrate the ability to achieve and maintain environmental thresholds, and have a clearly demonstrated need for the additional allocation. TRPA shall retain a sufficient reserve to adequately address the needs of community plans not yet presented for review. It is TRPA's goal, acting in partnership with local interests, to achieve completion of community plans by December 31, 1989, in all areas where sufficient local interest and initiative exists to do such planning. Accordingly, TRPA expects to allocate the remaining unallocated floor area by that date, so long as the allocation is supported by local needs assessments.

(b) Before Adoption Of A Proposed Community Plan: Projects having an aggregate commercial floor area not exceeding the 36,000 square feet set forth in (a) of subparagraph 33.3.C(1) and located within the boundaries of proposed community plans, may be approved by TRPA. The 36,000 square feet allocation shall be apportioned to the local

jurisdictions as follows:

South Lake Tahoe/El Dorado County	10,008	sq. ft.
Placer County	14,976	sq. ft.
Washoe County	6,516	sq. ft.
Douglas County	4,500	sq. ft.

A local jurisdiction may transfer its above allocated commercial floor area to another jurisdiction pursuant to a memorandum of understanding between the participating jurisdictions and approved by TRPA. Within the limits set forth in this paragraph, the local jurisdiction shall select and recommend projects for TRPA consideration. No project shall be accepted for review by TRPA without a written recommendation from the local jurisdiction. No single commercial project shall be allocated more than 4,500 square feet of the 36,000 square feet in a ten year period for use within the project area.

- (c) After Adoption Of A Community Plan: Upon the adoption of a community plan, the rate of utilization of square footage of additional commercial floor area shall be in accordance with the provisions of the community plan. When all community plans within a jurisdiction are adopted, any remaining unallocated initial floor area assigned to the jurisdiction shall be assigned by TRPA to the adopted community plan areas within the jurisdiction.
- (2) Outside Community Plans: From January 1, 1987 to December 31, 1996, except as set forth in Subparagraph (3) below, the maximum amount of additional commercial floor area allocated to areas outside community plan boundaries is 40,000 square feet.<sup>§</sup>
- (a) Administration: A maximum of 40,000 square feet of additional commercial floor area shall be allocated and distributed by TRPA for commercial development outside community plan boundaries, proposed or adopted. The 23,660 square feet shall be apportioned to the local jurisdictions as follows:

South Lake Tahoe/El Dorado County	7,020	sq. ft.
Placer County	16,640	sq. ft.
Washoe County	0	sq. ft.
Douglas County	0	sq. ft.

A local jurisdiction may transfer its above-allocated commercial floor area to another jurisdiction pursuant to a memorandum of understanding between the participating jurisdictions and approved by TRPA. Within the limitations set forth in this paragraph, the local jurisdiction shall select and recommend projects for TRPA consideration. No project

<sup>§</sup> Amended 8/26/98

shall be accepted for review by TRPA without a written recommendation from the local jurisdiction.

- (b) Limitations: No single commercial project shall be allocated more than 4,500 square feet of the 40,000 square feet in a ten year period for use within the project area.
- (3) Allocation Time Limit Extension: The allocation time limits specified in subparagraphs (1) and (2) above shall no longer be applicable.

33.3.D Maximum Amount And Distribution Of Allocations For Additional Commercial Floor Area For Years 1997 and beyond: A maximum of 400,000 square feet of additional commercial floor area may be permitted from January 1, 1997. The allocation and distribution of this floor area shall be as follows:

- (1) Within Adopted Community Plans: A maximum of 150,000 square feet of commercial floor area may be permitted in an adopted community plan in which all irrevocable commitments, as defined in the applicable community plan as a requirement to release allocations, have been satisfied. The applicable local jurisdiction shall distribute the allocation subject to the adopted allocation system for that community plan. The distribution of this floor area shall be as follows:<sup>§</sup>
  - (a) TRPA shall apportion 10,000 square feet of commercial floor area to Washoe County, Douglas County, Placer County, El Dorado County and the City of South Lake Tahoe. Allocations not assigned by December 31, 1998 shall be reassigned to the Special Projects as set forth in (3) below.
  - (b) By January 1, 1999, TRPA shall apportion 50,000 square feet of commercial floor area allocation to Washoe County, Douglas County, Placer County, El Dorado County and the City of South Lake Tahoe. The allocation assignment shall be based on a ranking comparison of the jurisdiction's accomplishment of environmental improvements set forth in the adopted community plans within that jurisdiction. The performance review committee (referred to in subparagraph 33.2.B.(5)) shall recommend the ranking to TRPA by October 31, 1998. The apportionment shall be according to the following table.
  - (c) TRPA shall apportion 50,000 square feet of commercial floor area to Washoe County, Douglas County, Placer County, El Dorado County and the City of South Lake Tahoe. The allocation assignment shall be based on a ranking comparison of the jurisdiction's performance on the approved Five-Year Water Quality and Air Quality EIP Lists within the jurisdiction between January 1, 2002 and December 1, 2005. The apportionment shall be according to

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<sup>§§</sup> Amended 10/25/06

<sup>§</sup> Amended 12/18/02

the following table:<sup>§</sup>

Ranking	Allocations
1.	20,000
2.	15,000
3.	8,000
4.	5,000
5.	2,000

- (2) Outside Community Plans: Allocations permitted in (1) above may be distributed outside community plans subject to the limitations in subparagraph 33.3.C.(2) and the local jurisdiction has adopted a commercial allocation system that assists in implementing Environmental Improvement Program projects outside CP areas.
- (3) <sup>§§</sup>Special Projects: A maximum of 187,770 square feet of commercial floor area remains for distribution to Special Projects after January 1, 2007. This CFA includes the 100,000 sf of CFA that had been held in reserve through 2006 and it may be permitted in adopted community plans or adopted TRPA master plans, in which all irrevocable commitments have been made. TRPA shall administer the special project allocations. The distribution of this floor area shall be as follows:<sup>§</sup>
- (a) Goals: The program goals are to promote major projects that result in the construction of threshold-related environmental improvements, to promote transfer of development that results in substantial environmental benefits, and to rehabilitate substandard development.
- (b) Eligibility: All projects in adopted community plans, adopted TRPA master plan areas, or in designated plan areas that are preparing a community plan or a TRPA master plan are eligible for special project allocations. No permits shall be issued for Special Projects until and unless TRPA has approved a community plan or TRPA master plan for the subject area.<sup>§§§</sup>
- (c) Evaluation Criteria: Approval of special projects shall be evaluated and conditioned upon the implementation of environmental improvement projects or transfers of development out of sensitive lands. These projects shall:
- (i) Assist in the attainment of the environmental thresholds by constructing projects listed in the TRPA Environmental Improvement Program, that address a Threshold standard found not to be in attainment per the 2001 Threshold Evaluation, and <sup>§</sup>
- (ii) Provide substantial environmental benefits or mitigation in excess of TRPA's project mitigation requirements.

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<sup>§§</sup> Amended 10/25/06

<sup>§</sup> Amended 12/18/02

<sup>§§§</sup> Amended 10/24/07

- (d) Public Assistance: Public and private partnerships are encouraged. Public assistance through redevelopment agencies, conservancies, local governments, and other means may be considered in evaluating special projects.
- (e) Maximum Amount: The maximum allocation that may be approved for a special project area within a calendar year is 50,000 square feet of floor area.
- (f) Time Limit: Initial assignments of allocations shall expire in one year unless extended by TRPA upon a showing of adequate progress toward a project approval.
- (g) Applications: Each year, TRPA shall consider applications for available special project allocations. Applications shall include a project prospectus that includes site plans, elevations, and preliminary environmental documentation.
- (h) Notifications: TRPA shall give adequate public notice 90 days in advance of any action assigning allocations. Notifications shall include the general criteria by which the special project will be evaluated.
- (i) APC Recommendation: The Advisory Planning Commission shall review the applications for special project allocations and make a recommendation to the Governing Board on the awards of commercial and tourist allocations. The performance review committee, referred to in subparagraph 33.2.B(5), shall assist the Advisory Planning Commission and staff in developing review criteria.

(4) <sup>§§</sup> Deleted

33.3.E Administration Of Allocations For Additional Commercial Floor Area: For purposes of Subsection 33.3.C and for purposes of determining a rate of allocation in a community plan, the date of issuance by TRPA to a project of an allocation for additional commercial floor area establishes the year to which the allocation is attributed.

- (1) Allocations shall not be issued except in connection with project approvals. The date of issuance of the allocation is the date the project is approved by TRPA. The allocation shall be set forth in the approval for the project.
- (2) An allocation for additional commercial floor area shall not be transferred to, or otherwise used for, a project other than that for which it was approved. If the allocation is not used prior to the expiration of the permit for the project, it shall expire with the permit, and the square footage of commercial floor area represented by the allocation shall automatically return to the pool from which it originated.

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<sup>§§</sup> Amended 10/25/06

- (3) TRPA shall monitor the issuance, use and expiration of allocations to assure compliance with this chapter, and shall make periodic reports to the public, through the Governing Board, as to the status of the allocation of commercial floor area.

33.4 Allocation Of Additional Tourist Accommodation Units: TRPA shall allocate the development of additional tourist accommodation units as follows:

33.4.A Requirement Of Allocation: No person shall construct a project or commence a use, which creates additional tourist accommodation units, without first receiving an allocation approved by TRPA. In order to construct the project or commence the use, to which the allocation pertains, the recipient of the allocation must comply with all other applicable provisions of this Code.

- (1) Applicable Tourist Accommodation Uses: The tourist accommodation uses set forth in Chapter 18 contain tourist accommodation units.

- (2) Definition Of "Additional" Tourist Accommodation Units: A tourist accommodation unit is considered "additional" if it is to be created pursuant to a TRPA approval issued on or after January 1, 1987 in accordance with Section 33.4. The conversion of an existing nontourist accommodation use to a tourist accommodation use constituting a tourist accommodation unit is an additional tourist accommodation unit requiring an allocation under this chapter. The following are not "additional" tourist accommodation units:

- (a) The reconstruction or replacement, on the same parcel, of a tourist accommodation unit legally existing or approved on January 1, 1987;
- (b) The reconstruction or replacement, on the same parcel, of a tourist accommodation unit, which was legally allocated and approved pursuant to this Code;
- (c) Modifications to legally existing tourist accommodation structures and accessory uses thereto;
- (d) The relocation of a legally existing tourist accommodation unit, through a transfer approved by TRPA, pursuant to Chapter 34; or
- (e) The conversion of legally existing multi family dwellings of six units or more, allocated and approved pursuant to this Code, to timesharing (residential design) units, provided the conversion is provided for in the relevant plan area statement or adopted community plan.

- (3) §§ Maximum Number And Distribution Of Allocations For Additional Tourist Accommodation Units: A maximum of 400 additional tourist accommodation units may be approved for construction.

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§§ Amended 10/25/06

After January 1, 2007, the original 200 tourist accommodation bonus units (with 172 units remaining). shall be limited to special projects (in accordance with sub-section 33.3.D.(3))<sup>§</sup> and shall only be permitted when matched by transfers of existing units (pursuant to Chapter 34) from sensitive lands that have been restored. After January 1, 2007, TRPA shall allocate the 200 tourist accommodation bonus units, (with 170 units remaining) to projects within adopted community plans in accordance with Chapter 35. Distribution of units within the community plan shall be pursuant to the provisions of the adopted community plan and the following criteria:

- (a) The additional concentration of tourist accommodation units is consistent with the TRPA Regional Transportation Plan and would better promote transit and pedestrian forms of transportation;
- (b) The additional units are part of an overall program to rehabilitate and upgrade existing tourist accommodation units;
- (c) The existing infrastructure capacity, such as sewage disposal and highway capacities, are sufficient to accommodate the additional units; and
- (d) A demonstration of need for additional units is shown pursuant to Chapter 14.

33.4.B Administration Of Allocations For Additional Tourist Accommodation Units: For purposes of subparagraph 33.4.A(3) and for purposes of determining a rate of allocation in a community plan, the date of issuance by TRPA to a project of an allocation for additional tourist accommodation units establishes the year to which the allocation is attributed.

- (1) Allocations shall not be issued except in connection with project approvals. The date of issuance of the allocation is the date the project is approved by TRPA. The allocation shall be set forth in the approval for the project.
- (2) An allocation for additional tourist accommodation units shall not be transferred to, or other wise used for, a project other than that for which it pertains. If the allocation is not used prior to the expiration of the permit for the project, it shall expire with the permit, and the tourist accommodation units represented by the allocation shall automatically return to the pool from which they originated.
- (3) TRPA shall monitor the issuance, use and expiration of allocations to assure compliance with this chapter, and shall make periodic reports to the public, through the Governing Board, as to the status of the allocation of tourist accommodation units.

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<sup>§</sup> Amended 12/20/00

33.5 Regulation Of Additional Public Service Facilities: TRPA shall regulate the rate and distribution of additional public service development as follows:

33.5.A Required Findings for Approval of Additional Public Service Facilities: Approval of additional public service facilities shall only be permitted for projects for which the sponsoring entity demonstrates, and TRPA finds that:

- (1) There is a need for the project;
- (2) The project complies with the Goals and Policies, applicable plan area statements, and Code;
- (3) The project is consistent with the TRPA Environmental Improvement Program;
- (4) The project meets the findings adopted pursuant to Article V(g) of the Compact as set forth in Chapter 6 as they are applicable to the project's service capacity;
- (5) If the proposed project is to be located within the boundaries of the community plan area, then, to the extent possible consistent with public health and safety, the project is compatible with the applicable community plan; and
- (6) Where a public service project is proposed for construction in a community plan area before the community plan has been adopted by TRPA, the sponsoring entity shall demonstrate that the need for such a construction schedule outweighs the need for the prior completion of the community plan process.

33.5.B Definition Of "Additional" Public Service Facilities: Public service facilities are considered "additional" if they are to be created pursuant to a TRPA approval issued on or after January 1, 1987. The conversion of an existing nonpublic service facility use to a use constituting a public service facility is an additional public service facility subject to this chapter. The following are not "additional" public service facilities:

- (1) The reconstruction or replacement, on the same parcel, of legally existing public service facilities;
- (2) Modifications to legally existing public service facilities and accessory uses thereto, that do not create additional service capacity;
- (3) Public or quasi-public utility service connections;
- (4) Replacement or reinforcement of pipelines or transmission lines which result in no significant increase in service capacity; and
- (5) Telephone lines, local distribution facilities and similar facilities.

33.5.C Provisions Regarding Commercial Floor Area Allocation for Public Service Projects: If the owner of the project area is the operator of the public service use pursuant to Chapter 18, then the provisions of Subsection 33.5.A apply. If the owner of the project area leases his property to an operator of a public service use, the facilities shall be

considered a commercial use and subject to the allocation limitations of Section 33.3 unless: <sup>§</sup>

- (1) A deed restriction describing the use restrictions is recorded and TRPA and the local government of jurisdiction are included as parties to the deed restriction; and
- (2) The lease contains adequate assurances that public service use will remain for a minimum of 7 years; and
- (3) Local government has committed to enforcement of any change of use through permits and business licenses; and
- (4) All lien holders on the property have been notified of the deed restrictions.

33.5.D Transfer or Relocation Onsite of Commercial Floor Area Related to a Public Service Use: Transfer or Relocation of commercial floor area from an existing commercial use may be permitted when a public service use is approved that displaces commercial floor area. The transfer shall be approved only in conjunction with a project approval at the receiving site. The transfer is subject to the standards of Chapter 34 and the following standards: <sup>§</sup>

- (1) The owner of sending project area complies with Subparagraphs (1) through (4) of Subsection 33.4.C above; and
- (2) The public service use displacing the commercial use is one of the following: Local Public Health and Safety Facilities, Regional Public Health and Safety Facilities, Collection Stations, Cultural Facilities, Day Care Centers/Pre-Schools, Government Offices, Local Post Offices, Social Service Organizations, and Transit Stations and Terminals; and
- (3) The commercial floor area displaced is transferred to a site in a designated community plan area; and
- (4) In order for a receiving project area to qualify for transferred commercial floor area, the receiving project area shall meet the criteria applicable to allocations under the applicable adopted CP allocation system. If the CP area does not have an adopted allocation system, the applicable local jurisdiction shall be required to adopt a system pursuant to the requirements of Subparagraph 33.3.D(2) before the transfer may occur; and
- (5) TRPA determines, that when combined with all other public service-commercial transfers since January 1, 1998, the additional public service floor area associated with the transfer is within the 60,000 square feet of additional public service floor area estimated to be created by such transfers.

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<sup>§</sup> Amended 10/28/98

33.6 Regulation Of Additional Recreation Facilities: TRPA shall regulate the rate and distribution of additional recreation as follows:

33.6.A Required Findings for Approval of Additional Recreation Facilities: Approval of additional recreation facilities shall only be permitted for projects, for which the sponsoring entity demonstrates, and TRPA finds that:

- (1) There is a need for the project;
- (2) The project complies with the Goals and Policies, the applicable plan area statements, and Code;
- (3) <sup>§</sup>The project is consistent with TRPA's targets for outdoor recreation, which are 6,114 people at one time ("PAOT") in overnight facilities, 6,761 PAOT in summer day-use facilities, and 12,400 PAOT in winter day-use facilities, as well as the allocations set forth in the plan area statements, or the pools of reserved PAOT capacity;
- (4) The project meets the findings adopted pursuant to Article V(g) of the Compact as set forth in Chapter 6 as they are applicable to the project's recreational service capacity; and
- (5) If the project requires PAOT allocations, it is consistent with the TRPA Environmental Improvement Program.

33.6.B Definition Of "Additional Recreation": Recreation is considered "additional" if it is to be created pursuant to a TRPA approval issued on or after January 1, 1987 and results in an increase in vehicle trips that requires a traffic analysis pursuant to Subsection 93.3.B, or increased floor space of five percent, or 500 square feet, or would increase PAOT capacity. (See Subsection 13.5.L.) The conversion of an existing non-recreational use to a use constituting a recreation facility is additional recreation subject to this chapter. The following are not "additional" recreation facilities:

- (1) The reconstruction or replacement, on the same parcel, of recreation facilities legally existing on, or approved before, January 1, 1987;
- (2) Modifications to legally existing recreation and accessory uses thereto, that do not create additional service capacity;
- (3) Relocation of legally existing recreation facilities through a transfer approved by TRPA pursuant to Chapter 34; or
- (4) Dispersed recreation.

33.6.C Allocation of Additional Recreation PAOTs: No person shall construct a project or commence a use which requires additional PAOTs without first receiving an allocation approved by TRPA. In order to construct the

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<sup>§</sup> Amended 10/25/06

recreation project or commence the additional recreation use, the person proposing same shall comply with all other applicable provisions of this Code.

(1) Applicable Recreation Uses: The following recreation uses are subject to PAOT allocation consistent with the PAOT standards set forth in subparagraph 33.6.C(2).

(a) Summer Day Use: Additional summer day use capacity shall be subject to PAOT allocations as follows:

(i) Uses subject to summer day use PAOT allocation include marinas, boat launching facilities, rural sports, golf courses, visitor information centers, and off-road vehicle courses.

(ii) Recreation centers, participant sport facilities, sport assembly, beach recreation, and day use areas, operated by the states' Departments of Parks and Recreation or their permittees, or by federal agencies or their permittees shall be subject to summer day use PAOT allocation.

(iii) Shorezone uses requiring summer day use PAOT allocations include tour boat operation and those portions of beach recreation, commercial boating, or water-oriented outdoor recreation concessions, which provide additional outdoor recreation capacity.

(b) Winter Day Use: Additional winter day use capacity shall be subject to PAOT allocation as follows:

(i) Uses subject to winter day use allocation include all downhill ski facilities.

(c) Overnight Use: Additional overnight use capacity shall be subject to PAOT allocation as follows:

(i) Uses subject to overnight PAOT allocation include developed campgrounds, group facilities, and recreational vehicle parks.

(2) Definition Of Additional PAOTs: A PAOT is considered "additional" if it is to be created pursuant to a TRPA approval issued on or after January 1, 1987 and results in an increase in the design capacity of a facility or increases the overall primary recreational use in the area of a project subject to PAOT limitation, (see Subsection 13.5.L.). The conversion of an existing recreation use not requiring PAOTs to a use which does constitute additional PAOTs. The following are not "additional" PAOTs:

(a) The reconstruction or replacement, on the same parcel, of

recreation facilities legally existing on, or approved before, January 1, 1987;

- (b) Modifications to legally existing recreation and accessory uses thereto, that do not create additional service capacity;
  - (c) Relocation of legally existing recreation facilities through a transfer approved by TRPA pursuant to Chapter 34; or
  - (d) Dispersed recreation.
- (3) § Maximum Amount and Distribution of PAOT Allocations: A maximum amount of recreational PAOT capacity is targeted and permitted for development after January 1, 1987. TRPA shall keep a cumulative accounting of recreation allocation in people at one time (PAOT) as applicable.
- (a) General: PAOT capacity shall apply to the primary recreational use of a facility.
    - (i) PAOT allocations shall not be issued except in connection with project approvals. The date of issuance of the allocation is the date the project is approved by TRPA. The PAOT allocation shall be set forth in the approval for the project.
    - (ii) An allocation for additional PAOTs shall not be transferred to, or otherwise used for, a project other than that for which it was approved. If the allocation is not used prior to the expiration of the permit for the project, it shall expire with the permit, and the recreation capacity represented by the allocation shall automatically return to the pool from which it originated.
    - (iii) TRPA shall monitor the issuance, use and expiration of allocations to assure compliance with this chapter, and shall make periodic reports to the public, through the Governing Board, as to the status of the allocations of PAOTs.
    - (iv) New developed cross country ski and snowmobile courses shall be encouraged where appropriate as seasonal adjuncts to existing or new summer day use or overnight facilities.
  - (b) Summer Day Use: Summer day use capacity shall be allocated and distributed as follows:
    - (i) There shall be a pool of 6,761 PAOT for summer day use facilities. A minimum of 2,000 of the summer day use PAOT pool shall be reserved for expansion of marinas and boat launching facilities.
    - (ii) PAOT allocation for expansion of marinas and boat launching facilities shall require approval of a master

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<sup>§</sup> Amended 10/25/06

plan except as noted in Section 16.1.

(iii) PAOTs may be assigned to a plan area statement for future allocation.

(c) Winter Day Use: Additional winter day use capacity shall be allocated and distributed as follows:

(i) There shall be 12,400 winter day use PAOTs for downhill ski areas. All winter day use PAOTs shall be distributed in the plan area statements.

(ii) Expansion of use in downhill ski areas requires the adoption of a master plan pursuant to Chapter 16.

(d) Overnight Use: Additional overnight use capacity shall be allocated and distributed as follows:

(i) There shall be 6,114 PAOTs for overnight uses, of which 5,114 shall be distributed in the plan area statements. The remaining pool of 1,000 overnight PAOTs may be allocated to overnight uses meeting the criteria set forth in Subsection 33.6.A and subparagraph 33.6.C(3)(d)(ii) below and which uses are located in plan areas where there are no PAOTs specified in the plan area or the amounts specified are insufficient for the proposed use.

(ii) To be eligible for overnight PAOT allocation from the pool, the project area must retain, or be restored to, a near natural state, include outdoor living amenities such as tables and fire pits, and offer access to outdoor recreational opportunities such as hiking trails, public beaches, and fishing.

(4) Other Recreational Facilities: Other permissible recreation facilities including riding and hiking trails, undeveloped campgrounds, outdoor recreation concessions and dispersed recreation support facilities shall be subject to Subsection 33.6.A, but shall not be subject to PAOT allocations.

33.7 Election Of Conversion Of Use: Existing residential units may be converted to tourist accommodation units or commercial floor area and existing tourist accommodation units may be converted to residential units or commercial floor area subject to the following limitations. The proposed conversion shall be evaluated for adverse impacts using the IEC and the addenda developed by TRPA for conversions and shall not be permitted if adverse impacts cannot be mitigated. Residential and tourist accommodation units shall be converted on a ratio of one unit for one unit. Residential and tourist accommodation units shall be converted to commercial floor area at a ratio of one square foot of existing floor area, using the Subsection 33.3.B criteria for measurement of floor area, to one square foot of commercial floor area. A maximum of 200 residential units and 200 tourist units may be converted within a calendar year for the Region. <sup>§</sup>

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<sup>§</sup> Amended 10/28/98

- 33.7.A Transfer From Sensitive Lands: Conversion of an existing residential or tourist accommodation unit to a residential, tourist, or commercial use may be permitted when a residential or tourist unit is transferred from a parcel classified as land capability districts 1, 2, 3, or SEZ, and the parcel is restored, or;
- 33.7.B Removal of a Nonconforming Use: Conversion of an existing residential or tourist accommodation unit to a residential, tourist, or commercial use may be permitted in conjunction with a project approval if the conversion results in the elimination of the unit of nonconforming use. The structures containing the converted use shall meet TRPA standards for new construction, or;
- 33.7.C Uses Modified to Meet Development Standards for New Projects: Conversion of an existing residential unit of use to a tourist or commercial use or an existing tourist accommodation unit of use to a commercial use, or a residential use when it is certified to meet the local jurisdiction health and safety standards for residences, not to include single family residential,<sup>§§</sup> may be permitted onsite or for transfer in conjunction with a project approval if all structures and uses within the project area are modified to meet the TRPA standards applicable for a project proposed on an undeveloped project area, or;
- 33.7.D Uses Linked to an EIP Project: Conversion of residential unit of use to a tourist or commercial use or an existing tourist accommodation unit of use to a commercial use or a residential use when it is certified to meet the local jurisdiction health and safety standards for residences, not to include single family, may be permitted onsite or for transfer if the converted use is included as part of a project that has linked status pursuant to Chapter 31, Environmental Improvement Program.<sup>§</sup>
- 33.7.E Uses to Provide Deed Restricted Affordable Housing Projects: Conversion of existing tourist accommodation units of use to residential may be permitted onsite if the converted units are used for deed restricted affordable housing, the converted units are certified by the local jurisdiction that they meet their public health and safety standards for residences, and the project area meets TRPA standards applicable for modifications on a developed project area.<sup>§</sup>
- 33.8 Other Permits: Issuance of a permit by a county or city building department, of a permit for, or relating to, the construction, conversion, or use of units, floor area, service capacity or other development subject to the requirements of this chapter, including, but not limited to, a permit for a foundation, grading, clearing or removal of vegetation, is prohibited unless the permit is issued in conjunction with a TRPA approval, in accordance with this chapter.

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<sup>§§</sup> Amended 06/27/01

<sup>§</sup> Amended 06/27/01

