

# **Opinion: Mandating BMP compliance at point-of-sale a bad idea**

**Publisher's note:** *The South Tahoe Association of Realtors asked for this letter to the TRPA to be reprinted on Lake Tahoe News.*

**Dear Honorable Members of the Governing Board:**

The South Tahoe Association of Realtors Board of Directors would like to comment on the TRPA's draft environmental impact statement. While we applaud some sections of the draft EIS, we have serious concerns about the EIS sections regarding a potential point-of-sale mandate for best management practices.

There are two alternative plans in the draft EIS that call for best management practices to be installed and inspected at the point-of-sale. A point-of-sale mandate for best management practices would be disastrous for the real estate community, for homebuyers and home sellers. The following points highlight our serious concerns about the EIS point-of-sale alternatives.

1. Not environmentally friendly – Ironically, relying on a point-of-sale to implement policies is not friendly to the environment. That is because the point-of-sale is an inefficient trigger mechanism for implementing any type of policy. While some homes do change ownership after only a few years, many homes remain with the same owner for years and even decades. Lake clarity does not improve if only a few homes are being scrutinized. TRPA staff have recognized that the most environmentally friendly plan for best management practices is area-wide planning, not individual parcel planning with a point-of-sale trigger.

2. Shuts down the real estate market for at least six months a year – BMP certification requires inspection, prescription, implementation and final sign off by different parties. All of these steps can only be completed when snow is not on the ground. Furthermore, implementation of anything that disturbs more than 3 cubic yards of dirt can only be completed in the Tahoe basin between May 1 and Oct. 15. No one could buy or sell their homes in the winter or with snow. The real estate market is already fragile. Mandating a point-of-sale trigger would wreak havoc on an already strained market.

3. Unfair – To place the burden of the whole community on homebuyers and sellers is inequitable. Why should only a segment of the population be required to shoulder the burden for something that impacts the entire community?

4. Adds complications to sales transactions – Escrow is a time sensitive process. Another step only delays the process and adds more stress to the homebuyer and seller. More stress is not what homebuyers and sellers ever need, but particularly not in this economy.

5. Makes Realtors the enforcement police – Various retrofitting mandates require the agent or broker's signature for the completion certificate to be validated. This forces the real estate professional to act as an expert in a field in which they are not trained.

6. Causes the real estate professional to do the TRPA's job – An obligation by a government body should be enforced by that body, not by an individual in the private sector.

7. Creates unnecessary legal liabilities on the real estate professional – Usually, despite all factors, the real estate professional is the one who is forced to get directly involved in a lawsuit. The liability is unfair to real estate agents and brokers.

8. Any point-of-sale mandate would require all properties to

be evaluated – Most of the homes in the Tahoe basin do not have evaluations yet, and there is a long waiting list. Additionally, they will not do evaluations in the winter. Evaluating all properties is a costly and time-consuming process.

9. Putting money in escrow is infeasible – As stated above, properties cannot be evaluated in the winter for BMP compliance. How does one determine a dollar amount to implement BMPs if one does not know the costs? Furthermore, escrow companies don't want the responsibility of holding money for BMPs and lenders don't like to authorize it. The actual effect of a point-of-sale mandate will be to block home sales.

10. Not within the legal scope of the TRPA Compact – Article VI(a) of the TRPA Compact states that the TRPA's regulatory authority is generally limited to "matters which are of general and regional application." This language, along with the direction of the new Regional Plan, does not support the TRPA getting involved in private real estate contracts. Real estate contracts occur at the local level. For the TRPA to impose a best management practices point-of-sale mandate would require the TRPA to overstep its jurisdiction and get involved at the local level – far from the regional level planning powers the Compact grants the TRPA.

In addition to these listed concerns, we are concerned that the TRPA Governing Board would choose any alternative plan not endorsed by TRPA staff. TRPA staff's preferred alternative – alternative 3 – does not call for any point-of-sale mandates. Instead, alternative 3 advocates for area-wide best management practices as the most environmentally friendly option. TRPA staff is in the best position to recommend the direction of the best management practices program. We urge you to follow the TRPA staff direction and support alternative 3 in the draft environmental impact statement.

We, as a community, have a unique opportunity with the new TRPA Regional Plan. We have the ability to look forward toward more effective environmental planning in the Tahoe basin. Supporting an alternative that includes a best management practices point-of-sale mandate looks backward instead of forward. Please support alternative plan 3 this fall.

Sincerely,

**Jill Teakell, president South Tahoe Association of Realtors  
board**