



STATE OF NEVADA

## Nevada Tahoe Regional Planning Agency

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### STAFF REPORT

November 3, 2022

**Subject:** Recertification of the Certified Base Data for the Tahoe Nugget Structure Housing Gaming in Stateline – For Possible Action

**Jurisdiction:** Pursuant to the Tahoe Regional Planning Compact, the NTRPA Governing Board reviews and regulates redevelopment of and modifications to Structures Housing Gaming. The Compact provides the following guidance related to the applicant's request.

- Structures Housing Gaming are buildings operating under a nonrestricted gaming license that existed on May 4, 1979 or were approved for construction before that date.
- Structures Housing Gaming are inclusive of their public areas, such as gaming, retail, restaurants, meeting areas, etc. and private areas such as hotel rooms and parking.
- Article VI of the Compact limits the amount of Structures Housing Gaming space to what was existing, or approved to be constructed, prior to May 4, 1979.
- Article VI(d)(1) says construction of a structure not so existing, or enlargement in cubic volume of any existing or approved structures is prohibited.

To assist the NTRPA Governing Board, certified base data for each Structure Housing Gaming was established. The certified base data documents the areas occupied by Structures Housing Gaming as of May 4, 1979. Certified base data is established for each Structure Housing Gaming's public areas, private areas, gaming, cubic volume, coverage, etc. Because the Compact restricts and even prohibits redevelopment if certified base data is exceeded, it is important that the data be accurate.

The Tahoe Regional Planning Compact Article VI, Section (e) states that "Any structure housing licensed gaming may be rebuilt or replaced to a size not to exceed the cubic volume, height and land coverage existing or approved on May 4, 1979 without the

approval of the agency or any planning or regulatory authority of the State of Nevada whose review or approval would be required for a new structure.”

NTRPA Ordinance 1980-1 Article 3, Section 3.1 states “When any modification, remodeling or change in use of a structure housing gaming requires a permit from the permit-issuing authority, an application shall be filed with the agency and with the permit-issuing authority showing proof of filing with the agency. The permit-issuing authority shall review the application for compliance with this ordinance. The application shall be deemed in compliance with this ordinance, if when compared to the base data findings on file with the permit-issuing authority, it will not:

- (a) Enlarge the cubic volume of said structure;
- (b) Increase the total square footage of an area open to or approved for public use on May 4, 1979; and
- (c) Convert private use area to public use area.”

NTRPA Plan Review Procedures Policy Section 1(d) Changes in Gaming Area states that “All plans and proposals which will change the area in square feet devoted to gaming or change the location of gaming with any such structure must be accompanied by an information report (NRS 277.200, Article VI(g)). The Board will review all information reports showing changes in gaming and direct their transmittal to the TRPA.”

Therefore, it is under the jurisdiction of the NTRPA Governing Board to review applications that propose changes to Structures Housing Gaming, and in this instance, consider a request to recertify the base data for the Tahoe Nugget Structure Housing Gaming in Stateline.

### **Lake Tahoe’s Scenic Character:**

In reviewing this request for an extension of time for Condition #1, it is important to recall that the Tahoe Regional Planning Compact stresses the importance of the scenic character of Lake Tahoe.

### **Compact, Article I, “Findings of Declaration of Policy:**

#### **Section (a)(8) states:**

*“Responsibilities for providing recreational and scientific opportunities, preserving scenic and natural areas, and safeguarding the public who live, work and play in or visit the region are divided among local governments, regional agencies, the States of California and Nevada, and the Federal Government.”*

#### **Section (a)(10) states:**

*“In order to preserve the scenic beauty and outdoor recreational opportunities of the region, there is a need to insure an equilibrium between the region’s natural endowment and its manmade environment.”*

## **Background**

At its February 2, 1987 meeting, the Governing Board certified the base data for the Tahoe Nugget. Below is a breakdown of the certified base data.

<u>Type</u>	<u>Certified Data</u>
Cubic Volume	200,462 CF
Site Coverage	11,560 sq ft
Non-Base Area	6,661 sq ft
Base Area	9,461 sq ft
Public Area	16,122 sq ft
Private Area	0 sq ft
Gaming Area	8,773 sq ft

A copy of the certified plans for the Tahoe Nugget are included in this staff report (Exhibit 7: Original 1987 Certified Plans).

At its December 20, 1995 meeting, the Governing Board, as part of a proposed redevelopment of the Tahoe Nugget building, reviewed a request to modify two existing stairwells and convert the second floor to non-gaming commercial offices. The requested modifications involved 84 sq ft of public area and 1,830 sq ft of cubic volume. During the meeting, the owner stated that the modification to enclose the stairwells was required by the building code as part of the change to the second floor of the building from gaming and other public uses to a non-public commercial office space. During the meeting the Governing Board expressed concern that the modifications could be perceived as an enlargement of cubic volume and could lead to an increase in gaming and base area of the structure in the future. The Governing Board wanted assurance that such a request could not be made in the future and approved the request subject to the following condition of approval:

“Modifications to stairwells made to satisfy public health, safety, and welfare requirements as established by applicable building and fire codes to allow use of second floor for commercial office space. These modifications, approved by the governing board of the Nevada Tahoe Regional Planning Agency during their meeting on December 20, 1995, do not add to the current square footage of cubic volume of the structure as certified on February 2, 1987.”

A copy of the full meeting minutes from the December 20, 1995 Governing Board meeting are included in this staff report (Exhibit 6: 1995 Board Meeting Minutes).

At its July 23, 2020 meeting, the Governing Board found that, although gaming had not been conducted onsite for many years, the certified base data for the Tahoe Nugget was valid and eligible to be used. At this same meeting the Governing Board approved Northern Nevada Comstock Investment’s request to utilize the certified base data subject to one Condition of Approval. The Condition of Approval required that the applicant submit to the NTRPA detailed architectural floor plans and base data calculations within 6 months after purchasing the site. According to records obtained by the NTRPA from Douglas County, Northern Nevada Comstock Investments closed on the purchase of the

Tahoe Nugget site on August 19, 2020. In September 2020, agency staff notified the applicant that they had until February 19, 2021 to satisfy the requirements of Condition #1.

At its December 4, 2020 meeting, the Governing Board approved a request to amend Condition #1 associated with the Board's previous determination for the Tahoe Nugget site. The approved amended Condition #1 extended the deadline, allowing the applicant to submit the detailed architectural floor plans and base data calculations to the agency by December 31, 2021. The approved amended Condition #1 also allowed the applicant to submit detailed architectural floor plans and base data calculations 6 months after commencing each future phase of the project.

As part of its approval at the December 4, 2020 meeting, the Governing Board defined the term "commencement". The Governing Board specified that the term "commencement" means that no construction can begin on any phase until such floor plans and base data calculations have been reviewed and approved by the NTRPA. The intent of the term "commencement" in Condition #1 as it relates to future phases of the project is to allow the owners of the site sufficient time to analyze tenant spaces within the building as they become vacant. At this same meeting, the Board expressed a desire to allow the applicant flexibility and sufficient time to tear down the vacant spaces within the existing building and submit the detailed architectural floor plans and base data calculations to the agency. However, the Board was clear that no construction or reestablishment of any gaming use within the building could begin until the plans were reviewed by the NTRPA and found to be in compliance with the certified base data for the site.

At the December 8, 2021 meeting the Governing Board approved a request for a second amendment to Condition 1 to allow for an additional 6 months (through June 30, 2022) to submit detailed architectural floor plans and base data calculations for the site. Included in the Governing Board's action was an amendment to Condition 1 requiring the applicant for all future phases of the project to submit detailed architectural floor plans within 6 months of starting each future phase. Below is the approved Condition 1 associated with the second extension of time for the certified base data eligibility determination for the Tahoe Nugget site.

"The applicant will submit detailed architectural floor plans and base data calculations for the Tahoe Nugget building to the NTRPA for the first phase of the project by June 30, 2022. For all future phases of the project the applicant will submit detailed architectural floor plans and base data calculations for the Tahoe Nugget building to the NTRPA within 6 months after commencing each phase."

On May 17, 2022, in compliance with the approved second amendment to Condition 1, agency staff received detailed architectural floor plans and base data calculations for the site from the applicant.

Staff found that the detailed architectural floor plans and base data calculations met the June 30, 2022 deadline in Condition 1. Since then, Agency staff have been working

closely with the applicant to determine whether the data provided meets the 1987 approved certified base data for the site.

A copy of the detailed architectural floor plans and base data calculations submitted by the applicant in compliance with Condition 1 is included in this staff report (Exhibit #1 Plans Submitted for Condition 1 Eligibility).

A copy of photos showing the historical and current conditions of the Tahoe Nugget building are also included in this staff report (Exhibit 8: Historical and Current Conditions Photos).

At its August 1, 2022 meeting, the Governing Board voted to continue the recertification for the Tahoe Nugget to a future meeting. The continuance was requested by the applicant to allow for additional time to compile the information needed by staff and the Governing Board to consider a recertification request.

### **Analysis**

At the July 23, 2020 Governing Board meeting, staff proposed that if the architectural floor plans and base data calculations for the first phase and future phases of the project are substantially in compliance with the certified base data for the site, then staff could sign off on the plans and report back to the Governing Board. At this meeting, staff indicated that if architectural floor plans and base data calculations for the first phase and future phases of the project were not in compliance with the certified base data, then staff would schedule a meeting for the NTRPA Governing Board to consider recertification of the certified base data.

Over the past several months, the applicant has examined the Tahoe Nugget's existing conditions as commercial tenants vacate the premises. With increased access to the building, the applicant has been able to take accurate measurements. After reviewing the updated measurements, staff has determined the existing conditions of the building are not consistent with the certified base data. The public area, non-base area, and cubic volume measurements exceed the certified base data.

Below is a table that breaks down the differences between the certified base data, the building's existing conditions, and staff's proposed base data recertification.

Table 1: Proposed Tahoe Nugget Recertification

<u>Type</u>	<u>Certified Data</u>	<u>Existing Conditions</u>	<u>Proposed</u>
<u>Recertification</u>			
Public Area	16,122 sq ft	16,563 sq ft	16,563 sq ft
Base Area	9,461 sq ft	9,461 sq ft	9,461 sq ft
Non-Base Area	6,661 sq ft	7,102 sq ft	7,102 sq ft
Gaming Area	8,773 sq ft	8,773 sq ft	8,773 sq ft
Private Area	0 sq ft	0 sq ft	0 sq ft

Cubic Volume	200,462 CF	226,297 CF	226,297 CF
Site Coverage	11,560 sq ft	11,560 sq ft	11,560 sq ft

A full breakdown table showing the differences between the 1987 certified base data, errors in the 1987 base data, 1995/1995 approved modifications, and the proposed recertification is included in this staff report (Exhibit #2 Tahoe Nugget Comparison Table).

#### Cubic Volume

The volume of the existing Tahoe Nugget building was calculated by the applicant and their team of experts to be 226,297 cubic feet. The certified cubic volume, identified by NTRPA in 1987, is 200,462 cubic feet. The majority of the difference is a result of an error made in the original calculations. The certified plans on file at the agency shows the height of the entire ground floor to be 13 feet. After the demolition of the interior on the north side of the building, it was discovered that the west portion of the building is a different height than the east portion. The east portion of the building is close to 13 feet, but the original west section is just over 15 feet.

When this difference is applied to the area of the west section it results in the addition of 16,890 feet of cubic volume throughout the building that was not accounted for in the certified plans on file with the agency. Additional changes were made to the building following the redevelopment of the property after 1996 when gaming use ceased. Additional changes to the building that were reviewed and approved by the NTRPA and the TRPA include the installation of new stairwells, a new entry way, two mechanical chases, new building siding, and a second roof with drainage features. This resulted in an additional 8,945 feet of cubic volume. Combined, there is 25,835 feet of additional cubic volume unaccounted for in the certified base data.

Schematics showing the building height errors in the original certified base data and the 1996 improvements are included in Exhibit #3 Building Changes Diagram.

#### Public Area

According to the applicant's team of experts there is a difference from the existing condition of the building and the certified public area of the building. The total public area of the building is 16,563 sq ft which is larger than the 16,122 sq ft of certified public area. According to the applicant, the additional 441 sq ft of public area can be accounted for by the changes made in 1996 to the stairways on the north and south sides of the building. There were also changes to the overall size of the building that are believed to be the result of adding wood siding and trim to the building exterior which originally was concrete masonry. On the second floor of the building are two mechanical chases that have been added to the building that were not accounted for in the certified base data.

A breakdown detailing the increase in the public area has been provided by the applicant. Please see Exhibit 4: Public Area Breakdown.

#### Base and Non-Base Areas

The base and non-base areas of the site's certified data are a subset of the overall public area. Said a different way, the public area is the sum of the base and non-base areas. The

TRPA Compact defines base area as the area within a structure housing non-restricted gaming that is open to public use whether gaming is carried on in that area or not. Non-base areas are areas that are opening to the public but are used for uses like retail stores, convention centers, meeting rooms, administrative offices, rest rooms, kitchens, counting rooms, and mechanical areas. After review, staff have determined the additional 441 sq ft of public area resulting from the 1996 modifications to stairwells, mechanical chases, etc fall into the non-base area definition.

The applicant's Phase 1 interior remodel proposal includes reconfiguring uses that fall into non-base and base areas. These proposed square footages do not conform with the certified base data (current and proposed). However, the Compact allows non-base or base area square footages to be exceeded without NTRPA Board approval as long as the Public Area square footage is not exceeded.

A diagram and list of definitions of NTRPA certified base data is included in this staff reports. Please see Attachment #5 NTRPA Diagram and Definitions.

Staff believes that the proposed recertification request will more accurately reflect the conditions of the building today and allow the NTRPA to better administer the provisions related to gaming on the Tahoe Nugget site in accordance with the provisions of the Tahoe Regional Planning Compact. Updated certified base data for the site will allow the agency to make an accurate determination on whether a recertification request to the Governing Board will be warranted when reviewing future phases of the project. As indicated at the July 23, 2020 Governing Board meeting, staff proposes that if the architectural floor plans and base data calculations for future phases of the project are substantially in compliance within the cubic volume and public areas of the certified base data, then staff will have the ability to sign off on the plans for compliance and report back to the Governing Board. If the architectural floor plans and base data calculations for future phases of the project are not in compliance with the certified base data, staff will then schedule a meeting for the NTRPA Governing Board to consider recertification of the certified base data or deny the request.

### **Findings**

Paragraph (f) of Article VI of the TRPA Compact prohibits modifications to structures housing gaming if the modification will:

1. Enlarge the cubic volume of the structure;
2. Increase the total square footage of the area open to or approved for public use on May 4, 1979;
3. Convert an area devoted to the private use of guests to an area open to public use;
4. Increase the public area which is used for gaming beyond 15% of the total base area existing on August 4, 1980; or
5. Conflict with or be subject to the provisions of any of the agency's ordinance that are generally applicable throughout the region.

Enlarge the cubic volume of the structure

Staff finds that the proposed recertification does not result in an increase in the cubic volume of the structure. The proposed recertification of the cubic volume is a result of errors discovered in the cubic volume of the site that were not properly accounted for in the original certified base data for the Tahoe Nugget. Additionally, the proposed recertification of the cubic volume captures approved life safety and building code compliance changes to the building that occurred when the gaming use was not on the property between 1996 and 2022. It is the opinion of staff that the proposed recertification does not increase the cubic volume of the structure but rather accurately “trues up” the base data.

Increase the total square footage of the area open to or approved for public use on May 4, 1979 (certified data)

Staff finds that the proposed recertification does not result in an increase in areas open to or approved for public use. The proposed recertification of the public areas captures the approved life safety and building code compliance changes to building that were added to the building after 1996 during the time when the gaming use was not on the property. It is the opinion of staff that the proposed recertification does not increase the public areas of the structure but rather “trues up” the base data.

Convert an area devoted to the private use of guests to an area open to public use

Staff finds that the proposed recertification does not convert any private use to public use. There are no private areas included in the certified base data for the Tahoe Nugget.

Increase the public area which is used for gaming beyond 15% of the total base area existing on August 4, 1980

Staff finds that the proposed recertification request does not increase the public areas used for gaming beyond the 15% of the total base area on the site. The total certified gaming area of the Tahoe Nugget site is 8,773 sq ft. The applicant is not proposing any changes to the certified gaming area on the site. According to the applicant the project will only utilize 6,090 sq ft of the certified gaming area on the site as part of phase 1. The applicant has expressed interest to staff in further utilizing the gaming area on the site in future phases. All future phases of the project will be subject to NTRPA review and are required to be within the certified base gaming area.

Conflict with or be subject to the provisions of any of the agency’s ordinance that are generally applicable throughout the region

Staff finds that the recertification request does not conflict with, or is subject to, any other agency ordinances. In accordance with NTRPA Plan Review Procedures Policy Section 1(d) if the recertification request is approved by the Governing Board the applicant will be required to submit updated plan sheets and informational report with the new certified base data on the site for review staff and final approval by the Governing Board Chair.

**Staff Recommendation**



In accordance with the above referenced findings, staff recommends the approval of the recertification request for the Tahoe Nugget site. The requested recertification is consistent with the Governing Board's previous approval determination of the eligibility of the certified base data on the site and is in compliance with the Tahoe Regional Planning Compact, NTRPA Ordinance 1980-1, and the NTRPA Plan Review Procedures Policy. It is staff's interpretation of these regulations that the intent of regulating Structures Housing Gaming within the Lake Tahoe basin was to freeze the square footages of the certified base data and location of these uses in order to achieve the findings and declaration of policy of the Tahoe Regional Planning Compact. It is staff's opinion that the errors in the original certified base data and modifications made to the building for life and safety improvements since 1996 do not result in an increase in the cubic volume or the public areas of the structure. The proposed recertification of the base data will provide the agency with accurate building calculations and plans to reestablish the gaming use on the site consistent with the Governing Board's determination of eligibility in 2020 and the findings and declarations of policy in the Tahoe Regional Planning Compact.

**Suggested Motion:** *I move to find that there were errors and omissions in the original certified base data and in the previously approved modifications to the Tahoe Nugget building. I move to recertify the public area, cubic volume, non-base area and base area of the Tahoe Nugget site, Douglas County APN 1318-23-401-049 as outlined in Table 1 of the November 3, 2022 staff report.*

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ATTACHMENTS:

Exhibit 1: Plans Submitted for Condition 1 Eligibility

Exhibit 2: Tahoe Nugget Comparison Table.

Exhibit 3: Building Changes Diagram

Exhibit 4: Public Area Breakdown.

Exhibit 5: NTRPA Diagram and Definitions

Exhibit 6: 1995 Board Meeting Minutes

Exhibit 7: Original 1987 Certified Plans

Exhibit 8: Historical and Current Conditions Photos

Exhibit 9: Revised NTRPA Certified Base Table with Proposed Changes