

Attachment B.1
Revised Memorandum of Understanding (MOU)
Between the TRPA and California Tahoe Conservancy

Typographical corrections provided by Regional Plan Implementation Committee member, Shelly Aldean, on September 26, 2018 are highlighted in yellow.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE TAHOE REGIONAL PLANNING AGENCY
AND THE CALIFORNIA TAHOE CONSERVANCY**

This Memorandum of Understanding is entered into this XX day of XXX, 20XX, by and between the TAHOE REGIONAL PLANNING AGENCY (TRPA), a bi-state agency created under the Tahoe Regional Planning Compact, and the CALIFORNIA TAHOE CONSERVANCY, an agency of the State of California ("CONSERVANCY").

This Memorandum of Understanding replaces entirely the Memorandum of Understanding dated March 17th, 2016, between the parties and the former shall control all collection and expenditure of excess coverage mitigation fees and outline objectives for the acquisition and sale of all types of development rights by the CONSERVANCY.

I. AUTHORITY

This Memorandum of Understanding is based on the following laws, regulations, procedures, and policies:

- The Tahoe Regional Planning Compact, P.L. 91-143, 83 Stat. 360, (1969); amended, P.L. 96-551, 94 Stat. 3233, (1980) (hereafter "Compact");
- The Tahoe Regional Plan as adopted by TRPA in Ordinance No. 87-9 on June 25, 1987, effective July 1, 1987, and updated December 12, 2012 (hereafter "Regional Plan");
- The TRPA Code of Ordinances, Area Plans, Community Plans, Plan Area Statements, and Maps adopted pursuant thereto (all Chapter references herein below are to the Code of Ordinances);
- The enabling legislation of the California Tahoe Conservancy (Title 7.42; Section 66905 et seq.) as amended (Chapter 153, Statutes of 2015);
- Resolution No. 10-87-1 of the California Tahoe Conservancy, adopted October 23, 1987 and Resolution No. 16-03-05, adopted March 17, 2016;
- Resolution No. 87-25 of the Tahoe Regional Planning Agency, adopted October 29, 1987; and Resolution No. 87-30 of the Tahoe Regional Planning Agency, adopted December 16, 1987.
- Resolution No. xx of the Tahoe Regional Planning Agency, adopted xx xx, xxxx.

II. DEFINITIONS

The following terms shall have the definitions set forth below for purposes of this Memorandum. In the event of any conflict between the following definitions and the definitions in the TRPA Code of Ordinances, the definitions contained herein shall govern this Memorandum of Understanding to the extent of any inconsistency.

A. Development Rights.

The term "development rights" shall include commercial floor area, tourist accommodation units, and existing and potential residential units of use as defined in the TRPA Code of Ordinances.

B. Disturbed Areas

An area where soil, vegetation, or another natural feature of a site has been removed or substantially altered.

C. Excess Coverage Mitigation Project.

The term "excess coverage mitigation project" shall mean any action or activity undertaken by the CONSERVANCY for the purpose of generating excess land coverage mitigation credit through the land bank.

D. Excess Coverage Mitigation Fee.

The term "excess coverage mitigation fee" shall mean the fee which is required to be paid by a project proponent(s) in order to mitigate a project(s) with existing land coverage in excess of base allowable land coverage and which fee is calculated according to a formula set forth in Chapter 30 of the TRPA Code of Ordinances.

E. Hydrologically Related Area.

The term "hydrologically related area" shall refer to any one of the six areas designated on those certain maps adopted by TRPA on September 26, 1986, as they may be amended from time to time, which are located in whole or in part on the California side of the Lake Tahoe Region. The term "hydrologically related areas" shall refer to these six areas collectively.

F. Lake Tahoe Region, Lake Tahoe Basin.

The terms "Lake Tahoe Region" and "Lake Tahoe Basin" shall mean all that area described in Article II of the Tahoe Regional Planning Compact.

G. Land Bank.

The term "land bank" shall mean a land bank as provided for in the Goals and Policies of the Regional Plan, and Chapters 30 and 6 of the TRPA Code of Ordinances, to be established by the CONSERVANCY for that portion of the Lake Tahoe Region lying within the State of California.

H. Land Coverage.

The term "land coverage" shall include potential, soft, or hard coverage as defined in the TRPA Code of Ordinances.

I. Restoration Credit.

The term "restoration credit" shall include stream environment zone (Bailey Land Capability Class 1b) Restoration Credit and Bailey Land Capability Class 1a, 1c, 2, or 3 Restoration Credit. Restoration Credit is derived from verified soft or hard coverage located in Bailey Land Capability Class 1a, 1b, 1c, 2, or 3 that has been restored pursuant to Chapter 2 of the TRPA Code of Ordinances.

J. Stream Environment Zone.

The term "Stream Environment Zone" shall generally mean an area that owes its biological and physical characteristics to the presence of surface or groundwater or area further described in Chapter 53 of the TRPA Code of Ordinances.

K. Town Center

The term “Town Center” shall refer to areas designated by TRPA as a town center. These areas generally refer to concentrations of the Region’s non-residential services that have been targeted for redevelopment in a manner that improves environmental conditions, creates a more sustainable and less auto-dependent development pattern and provides economic opportunities in the Region.

III. PURPOSE

The purpose of this Memorandum is to establish the respective duties and authorities of the CONSERVANCY and TRPA with respect to a land bank to be operated by the CONSERVANCY for the California side of the Lake Tahoe Region and to set forth the procedures to be followed by TRPA and the CONSERVANCY with respect to the land bank.

IV. JURISDICTION AND POWERS

Subject to all applicable laws of the State of California and the Bi-State Compact, TRPA Regional Plan, and TRPA Code of Ordinances, the CONSERVANCY is designated as a land bank to meet the following objectives:

- A.** providing mitigation for excess coverage on behalf of any permit applicant on the California side of the Lake Tahoe Region, by carrying out an excess coverage mitigation project on any parcel or parcels eligible to provide such mitigation under Chapter 30;
- B.** providing mitigation for any public service or public outdoor recreation project located on sensitive lands by retiring and restoring hard and/or soft coverage and disturbed lands as provided in Chapter 30;
- C.** acquire, sell, and bank development rights from any parcel(s) **in the** owned by the land bank pursuant to TRPA Code of Ordinances;
- D.** increasing the supply of development rights, land coverage, and restoration credits in the land bank through acquisition of developed properties that no longer provide significant environmental, community, or economic benefit;
- E.** promoting movement of development rights, land coverage, and restoration credits, from outside of town centers and sensitive lands into town centers;
- F.** utilizing TRPA Regional Plan development right multiplier and bonus unit programs;
- G.** transferring development rights, land coverage, and restoration credits when in-lieu public benefits are provided that promote statewide, regional, and area plan goals above and beyond required mitigation measures; and,
- H.** coordinating annually with the TRPA to realign joint priorities.

The objectives of this memorandum relate directly to the Lake Tahoe Regional Plan goals and policies, which incentivize compact environmental redevelopment in pursuit of threshold attainment.

V. DUTIES

A. Establishment of Land Bank; Site Selection.

The CONSERVANCY shall take all necessary and appropriate action to maintain and manage the land bank and shall proceed with a systematic identification of lands that would be appropriate for inclusion in the land bank.

B. Priority Setting.

TRPA and the CONSERVANCY shall confer annually to set priorities for banking, transfer, or retirement of development rights, land coverage, and restoration credits and land or acquisitions consistent with section IV. Priorities shall be established that align with TRPA environmental threshold attainment, the Lake Tahoe Regional Plan, Conservancy enabling legislation, and statewide land use planning goals and policies.

C. Maintaining Inventory; Advance of Assets; Use of Inventory.

1. The CONSERVANCY shall use best efforts to acquire and maintain within the land bank an inventory of development rights, land coverage, and restoration credits for disturbed areas, sufficient to meet the projected needs of the land bank.
2. In order to maintain an inventory of development rights, land coverage, and restoration credits for the land bank, the CONSERVANCY may utilize assets other than excess coverage mitigation fees for the purpose of acquiring and/or restoring land for the land bank.
3. The CONSERVANCY may use acquired inventory to satisfy eligible project needs, provided CONSERVANCY jurisdiction and power under Section IV and priorities jointly established under V.B are not thereby impaired.
4. Restoration credits from restored parcels that are subsequently sold and transferred shall not be counted in the environmental improvement program (EIP) threshold reporting.

D. Assignment of Excess Coverage Mitigation Fees.

TRPA hereby agrees to assign to the CONSERVANCY, for the land bank, all excess coverage mitigation fees paid to TRPA for projects located in California through the term of this Memorandum.

E. Deposit of Excess Coverage Mitigation Fees.

When TRPA receives excess coverage mitigation fees from projects located in California, it shall deposit and hold the fees in an interest-bearing account under its control, until such time as it causes the excess coverage mitigation fees to be disbursed to the CONSERVANCY pursuant to Section V.G below.

F. TRPA Reporting of Excess Coverage Mitigation Fees.

TRPA shall deliver to the CONSERVANCY a report bi-annually containing the following information pertaining to each permit for which an excess coverage mitigation fee was received by TRPA during the preceding reporting period:

1. location of project by state, county, hydrologically related area, and assessor parcel number(s);
2. amount of fee paid by applicant;
3. amount and type of coverage in terms of square feet as determined under the coverage reduction formula in Chapter 30; and,
4. total balance of excess coverage mitigation funds for the requested specified time period.

G. Disbursements by TRPA.

TRPA shall disburse all accumulated excess coverage mitigation fees payable to the CONSERVANCY under Section V.D above, and any interest accrued thereon, less TRPA's investment administrative fees not to exceed 15% of the interest income, to the CONSERVANCY upon its request, which shall occur not more often than quarterly unless a project or purchase would require a more timely distribution. Requests for disbursements shall be accompanied with reporting on the intended usage of the excess coverage mitigation fees consistent with V.H below. Such disbursements shall require approval by the TRPA Governing Board and be made by electronic transfer payable to the "California Tahoe Conservancy," and shall bear the notation "land bank".

H. Use of Excess Coverage Mitigation Fees.

1. The CONSERVANCY shall use excess coverage mitigation fees received from TRPA solely for the purposes of:
 - a) for no less than 50% of the fees received, paying for assets advanced to the land bank by the CONSERVANCY, acquiring land for the use of the land bank, and restoring hard and soft coverage and disturbed lands and retiring potential coverage through the land bank. When using the fees for these purposes, the CONSERVANCY shall:
 - i) prioritize the retirement of hard and soft coverage on SEZs and other sensitive lands; and
 - ii) only retire potential coverage through acquisition of fee title or retirement of development potential on land located in Bailey Land Capabilities 1a, 1b, or 1c.
 - b) the CONSERVANCY may use no more than 50% of the fees received for Environmental Improvement Program projects or other projects deemed appropriate in advance by the TRPA Executive Director. The projects funded by the CONSERVANCY with excess coverage mitigation fees

under this provision:

- i) must benefit Water Quality and/or Soil Conservation thresholds; and,
- ii) cannot replace Total Maximum Daily Load ("TMDL") credit or other mitigation obligations of other entities.
- iii) can be used for administrative expenses and overhead, subject to the limitations in (2) below.

2. The CONSERVANCY may apply the excess coverage mitigation fees toward payment or reimbursement of its direct costs of acquisition, and/or restoration, and/or materials incurred for or through the land bank, by the CONSERVANCY or billed to the CONSERVANCY by contractors or other providers of services. These costs include, but are not limited to, all steps necessary to successfully restore land to meet various laws, regulations, permit requirements, and TRPA Code of Ordinances. Overhead and other incidental costs of administration, operation, and monitoring of the land bank may be charged by the CONSERVANCY against the excess coverage mitigation fees to cover actual costs to the CONSERVANCY, up to 12% of the aggregate of such fees (including interest) received from TRPA. The CONSERVANCY shall submit documentation of its overhead and other incidental costs prior to making any charges against the excess coverage mitigation fees.

I. Transfer of Land Coverage

Where the CONSERVANCY agrees to transfer land coverage on behalf of a permit applicant through the land bank, pursuant to Chapter 30 and Chapter 51 of the TRPA Code of Ordinance, TRPA and/or applicable permitting MOU partner shall, upon the CONSERVANCY'S request:

1. Certify to the CONSERVANCY the amount and type of land coverage of mitigation needed by the permit applicant
2. Determine the eligibility of the sending and receiving parcels; and
3. Approve or deny the transfer through a Documentation Letter.

J. Acquisition and Sale of Development Rights, Land Coverage, and Restoration Credits

Where the CONSERVANCY agrees to acquire and sell whole or portions of development rights, land coverage, and restoration credits with private or public parties consistent with IV and V of this MOU, transfers of development rights, land coverage, and restoration credits shall be reviewed and approved by TRPA.

The price paid for development rights, land coverage, and restoration credits shall be agreed upon by the permit applicant and the CONSERVANCY. The purchase price shall be paid directly to the CONSERVANCY or endorsed to the designated title company when a transaction involves an escrow. Said funds shall be deposited by the CONSERVANCY or designated title company. Upon receipt of funds and transaction or escrow closure, transaction data shall be tracked by the CONSERVANCY, and reported to TRPA as required.

- K. Severing Development Rights, Land Coverage, and Restoration Credits from Parcels**
The CONSERVANCY may sever all or portion of development rights, land coverage, and restoration credits from a parcel. If this option is exercised, TRPA and the CONSERVANCY will establish controls and procedures for the tracking and monitoring of such land use units no longer associated with a parcel.
- L. Public Service Projects and Public Outdoor Recreation Project**
The CONSERVANCY may enter into agreements to provide and/or reserve development rights, land coverage, and restoration credits for public service projects and public outdoor recreation projects meeting the Lake Tahoe Regional Plan goals and policies by restoring and removing hard or soft coverage and banking associated development rights as provided under Chapter 30 and Chapter 51. The terms and procedures set forth in Section V.C and V.I above shall apply to the mitigation of such public projects through the land bank.
- M. CONSERVANCY Projects**
The CONSERVANCY may reserve and/or use development rights, land coverage, and restoration credits from the Land Bank for future and/or current CONSERVANCY projects meeting Lake Tahoe Regional Plan Goals pursuant to this Memorandum and TRPA Code of Ordinances.
- N. Methods of Retiring Coverage**
1. Areas containing soft, hard, and/or potential coverage shall be retired by filing with TRPA document(s), in form acceptable to TRPA and suitable for recordation, by which the CONSERVANCY consents to the permanent retirement of said coverage on the areas described therein, unless and until TRPA approves the transfer of said right from the sending parcel.
 2. Soft coverage and disturbed lands shall be restored so as to cause the area to function in a natural state, with provision for permanent protection from further disturbance. Appropriate methods of restoration include, but need not be limited to, decompaction of soils, revegetation, restoration of land and/or natural watercourses and gradients, and removal of refuse.
 3. Hard coverage shall be restored by destruction and removal, to the extent feasible, of all structures, pavement, and other impervious land covering on the area to be restored, together with the methods specified in (2) above for restoration of soft coverage
 4. All coverage retirement carried out through the land bank shall be subject to TRPA and/or MOU permitting partners inspection and review.
 5. CONSERVANCY shall give priority to removal of coverage in sensitive areas.
- O. Annual Reports: Excess Coverage Mitigation Program.**
There shall be an annual reporting period, at the end of which the CONSERVANCY shall prepare and deliver to TRPA an annual report summarizing all excess coverage mitigation

projects performed during said reporting period and identifying the excess coverage mitigation fees which were applied toward each such project. The annual report shall, in addition, list:

1. the current inventory of parcels credited or available to the land bank for restoration and/or retirement of hard, soft, and potential coverage; and
2. all mitigation already performed or in progress, but not yet credited towards a permit applicant's project, including but not limited to:
 - a) square feet and land capability of coverage or disturbed land restored,
 - b) acres of land acquired by land capability,
 - c) estimated pollutant and stormwater load reductions, and
 - d) Soil Conservation and Water Quality threshold gains using EIP Performance Measures.

P. Annual Reports: Development Rights, Land Coverage, and Restoration Credits

There shall be an annual reporting period, at the end of which the CONSERVANCY shall prepare and deliver to TRPA an annual report summarizing all land bank transactions and holdings of development rights, restoration credits, and land coverage during said reporting period. The annual report shall include the following information for sending and receiving parcels:

1. assessor's parcel number or project number;
2. amount and type of development rights acquired, held, sold, and transferred;
3. land capability (Bailey/IPES scores) from which the development right was transferred from;
4. date of acquisition, sale, or transfer; and
5. distance of each sending site from a Town Center.

Q. CONSERVANCY Accounts.

The CONSERVANCY shall maintain accounts in keeping with State of California approved records retention schedules, which shall be made available to TRPA upon request, of:

1. all monies expended and received by the CONSERVANCY on behalf of the land bank;
2. all properties within the inventory of the land bank;
3. all areas on which coverage or disturbed land has been restored or retired

since the last annual reporting period made available to TRPA, including:

- a) the date as of which coverage or disturbed land has been restored or retired;
- b) the type of coverage or area restored or retired;
- c) the cost per square foot restored or retired;
- d) the area or amount of coverage that has been restored or retired, in square feet of each type retired; and
- e) the mechanism by which restoration or retirement has been accomplished.

In computing the cost per square foot of coverage retired, the CONSERVANCY may use an average based upon the cost of retiring a given type of coverage in more than one coverage mitigation project.

VI. Termination/Amendment

This Memorandum of Understanding may be terminated by either party upon ninety (90)-days advance notice in writing. This Memorandum of Understanding may be amended by written agreement of the CONSERVANCY and the TRPA Governing Board. In the event this Memorandum of Understanding is terminated for any reason and there is a balance of excess coverage mitigation funds available, the CONSERVANCY shall continue to carry out the duties of Section V, as well as related reporting obligations and TRPA shall continue to carry out the duties of Section V.F, as well as related reporting obligations, for all projects for which mitigation fees were received by TRPA prior the effective date of termination. Unexpended mitigation fees received by the Conservancy, if any, shall be returned to TRPA upon fulfillment of any outstanding obligations.

IN WITNESS WHEREOF, the parties have entered into this Memorandum of Understanding on the date first hereinabove written.

JOANNE MARCHETTA EXECUTIVE DIRECTOR
TAHOE REGIONAL PLANNING AGENCY

PATRICK WRIGHT
EXECUTIVE DIRECTOR
CALIFORNIA TAHOE CONSERVANCY