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STAFF REPORT

Date: October 17, 2018

To: TRPA Governing Board

From: TRPA Staff

Subject: California Tahoe Conservancy Memorandum of Understanding (MOU) regarding land bank authority and duties & Resolution to reaffirm local land bank authority

Summary and Staff Recommendation:

The Tahoe Regional Planning Agency's (TRPA) staff and the Development Rights Strategic Initiative's (DRSI) Working Group ask that the Governing Board consider approval and adoption of the proposed Memorandum of Understanding (MOU) between TRPA and the California Tahoe Conservancy (CTC) and a resolution to reaffirm local land bank authority as part of the Development Rights Strategic Initiative. The Development Rights Working Group, Advisory Planning Commission (APC), and Regional Plan Implementation Committee (RPIC) unanimously recommended approval of the MOU and resolution.

Required Motions:

In order to recommend approval of the requested action, the Governing Board must make the following motion(s), based on the staff summary:

- 1) A motion to recommend approval of the required findings (Attachment A), including a finding of no significant effect.
- 2) A motion to recommend approval and adoption of the proposed Resolution 18-___ to revise the MOU between the TRPA and CTC (Attachment B).
- 3) A motion to recommend adoption of the proposed resolution (Attachment C) to reaffirm the California Tahoe Conservancy's and Nevada Division of State Land's land bank authority.

In order for motion(s) to pass, the vote of at least four of the members of each state agreeing with the vote of at least four members of the other state shall be required.

Regional Plan Implementation Committee Recommendation/Discussion:

The Regional Plan Implementation Committee (RPIC) unanimously recommended approval of the proposed MOU and resolution on September 26, 2018 subject to typographical corrections to the California Tahoe Conservancy Memorandum of Understanding and resolution to reaffirm the authority of the local land banks as provided by Shelly Aldean. TRPA staff incorporated these corrections into the amendments found within Attachments B.1 and C of this packet.

Advisory Planning Commission (APC) Recommendation/Discussion:

The APC unanimously recommended approval of the revised MOU and resolution on September 12, 2018.

Working Group Recommendation/Discussion:

The DRSI Working Group (which includes representatives from the CTC and Nevada Division of State Lands) unanimously recommended approval of the revised MOU and resolution on August 23, 2018.

Project Description:

TRPA's DRSI considered changes to the development rights system in order to accelerate the Lake Tahoe Regional Plan Goals and Policies, support environmentally beneficial and economically feasible redevelopment, improve the effectiveness and predictability of the development rights system, and continue to manage growth in the region. The development rights system is a central part of the Regional Plan's growth management system and an important strategy used to attain multiple environmental thresholds. The DRSI proposes five changes to the system:

- (1) allow conversions between different types of development rights – commercial floor area (CFA), tourist accommodation units (TAU), and residential units of use (RUU) – using environmentally neutral exchange rates;
- (2) expand the eligibility of the residential bonus unit incentive program;
- (3) enhance the development right banking system through partnerships with the local land banks;
- (4) eliminate overlapping, multi-jurisdictional approvals of development rights transfers; and
- (5) eliminate the requirement to have an approved project on a receiving site prior to a transfer of development rights.

Implementation of recommendation number three, “enhance the development right banking system”, would require a resolution reaffirming the local land bank authority and a revised MOU between TRPA and CTC to facilitate land acquisitions by CTC, increase the supply of development rights in the land bank, and accelerate the movement of existing development into the Town Centers. The revised MOU would replace the existing MOU between TRPA and CTC adopted by the TRPA Governing Board on March 17, 2016, Resolution 16-03-05.

Under the existing TRPA and CTC MOU, CTC has the authority to provide mitigation on behalf of project applicants on the California side of the Lake Tahoe Basin and sell and transfer coverage. They do so by acquiring and maintaining an inventory of hard, soft, and potential coverage; restoring hard and soft coverage on disturbed or sensitive lands; and retiring potential coverage. In exchange, TRPA transfers all excess coverage mitigation fees paid to TRPA for project approvals in California.

The revised MOU would expand the CTC's ability to acquire, sell, and transfer all forms of development rights (i.e. CFA, TAU, existing and potential RUU, and land coverage) and align with the authority granted to the CTC by the State of California.

The resolution is intended to support state legislative proposals of the land banks as needed to help accelerate the goals and policies of the Regional Plan. For example, California legislative proposals by CTC to use alternative transfer or disbursement strategies in cases where the goals of the Lake Tahoe Regional Plan and State of California planning and environmental preservation objectives can better be achieved.

The purpose of this staff report is to provide a brief background of land banks within the Tahoe region and recommendation number three. Supplemental materials attached to this report include the environmental findings and findings of no significant effect, Initial Environmental Checklist, the revised MOU, and policy resolution. A full discussion on all five Development Rights Strategic Initiative's recommendations, including the environmental analysis and amendments, is included in Agenda Item Number V.A.1 of this packet.

Background:

Since the 1987 Lake Tahoe Regional Plan, local land banks in California and Nevada have played a crucial role in mitigating the environmental impacts associated with the urbanization of the Lake Tahoe Basin. These partners continue to help meet local land use goals today by land and development right acquisition, the transfer of development rights, permanent retirement of land coverage, and sensitive land restoration. As part of their MOU with TRPA, the land banks receive excess coverage mitigation (ECM) fees paid by project applicants to mitigate legally existing "grandfathered" coverage amounts. These fees are then used to acquire and retire offsite coverage. This continued partnership is a key mechanism to meet the goals and policies of the Regional Plan and accelerate threshold attainment by transferring aging development from sensitive areas into more walkable, bikeable, and transit-oriented town centers. Throughout the DRSI process, there has been broad-based support to expand this partnership and realize previously untapped potential.

The CTC, for example, seeks to achieve goals related directly to the Regional Plan Performance Measures, which incentivize environmental redevelopment in pursuit of threshold attainment, such as:

- Modify the distribution of development after 2012 compared to the distribution in 2012;
- Increase the annual average number of development rights transferred to town centers from sensitive and remote land compared to the annual average prior to 2012;
- Accelerate the removal rate of existing non-residential development rights on sensitive lands;
- Improve housing availability for residents and workers;
- Increase percentage of all trips using non-automobile modes of travel (transit, bicycle, pedestrian);
- Decrease automobile vehicle miles travelled per capita (excluding through trips)
- Accelerate pedestrian and bicycle improvements; and
- Increase the rate of redevelopment.

The Development Rights Working Group's recommendations (including conversion exchange rates and eliminating overlapping approvals) are projected to significantly improve the existing development

rights system by allowing easier movement of development rights, encouraging environmentally beneficial redevelopment, and simplifying the system.

One additional vehicle that local land banks (California Tahoe Conservancy, Nevada Division of State Lands) and others could use to drive desired community and environmentally beneficial redevelopment is to expand their inventories of development rights. Currently, the land banks acquire primarily land coverage and potential residential units of use (previously referred to as “residential development rights”). This role could be expanded to development rights (i.e. commercial floor area, tourist accommodation units, and residential units of use) as well. The banking function involves providing development rights in return for some sort of repayment. As the repayment is received, additional development rights are acquired. The newly acquired development rights are then provided in return for repayment, continuing the cycle. The cycle is repeated over and over. However, unlike a for-profit bank, the development rights bank may or may not receive a full return on the rights it provides because its mission is restoration, redevelopment, provision of workforce housing, etc. These organizations would have the ability to seek additional funding to augment their development rights banking role, whether to subsidize development rights for desired types of development or to provide additional development funds to support desired ends, such as workforce housing. Acquiring all forms of development rights, other than just coverage, for example aligns with authority granted to the California Tahoe Conservancy by the State of California.

TRPA will continue to track and monitor transactions and ensure that the development rights system continues to support the Lake Tahoe Regional Plan goals and policies. The development rights banks would continue their role acquiring and providing a reliable and steady inventory of development rights and pricing those development rights or distributing them based on defined priorities. In addition, having more development rights traded through public and quasi-public agencies will provide greater transparency and public awareness of the development rights system.

This strategy would accelerate the goals and policies of the Lake Tahoe Regional Plan by:

- Removing aging properties that no longer provide significant community and economic benefits;
- Restoring sensitive areas and increasing environmental restoration;
- Creating reliable sources, or central repositories, of development rights to better serve demand; and,
- Facilitating redevelopment in Town Centers.

Partnering with Local Land Banks

Between November 2017 and May 2018, the DRSI project team worked closely with representatives from both the CTC and Nevada Division of State Lands to better understand the role of the land banks in

the development rights system and identify strategies for better meeting the goals of the Lake Tahoe Regional Plan. The sections below summarize key take-aways from those discussions.

Nevada Division of State Lands (NDSL)

The DRSI team met with Charlie Donahue (Administrator), Elizabeth Kingsland (Management Analyst), and Brenda Swart (Land Agent) from NDSL on January 3, 2018. NDSL supports the role of the local land banks in the development rights system; however, NDSL currently does not have the need or demand to amend their MOU with TRPA. In addition to land management in the Lake Tahoe Basin, NDSL administers special programs and land use planning services throughout the State of Nevada.

The NDSL noted that since the agency's initial MOU with TRPA in the late 1990's, the NDSL role in the development rights system primarily involved the acquisition, banking, and transferring of *land coverage*. Since that time, NDSL has disposed of only four residential development rights, and has not had many inquiries regarding other development rights. Unlike the California portion of the Lake Tahoe Basin, there are relatively few lodging facilities on the Nevada side, and therefore NDSL is not regularly involved in tourist accommodation unit (TAU) transactions. Additionally, NDSL has not received any inquiries or requests from the local jurisdictions to increase their role or activities in the Basin.

The NDSL also indicated that the current process defined in the TRPA/NDSL MOU is working efficiently. NDSL does not have any requests for streamlining or process improvements related to their MOU.

California Tahoe Conservancy

The DRSI team met with Patrick Wright (Executive Director) and Kevin Prior (Chief Administrative Officer) numerous times between November 2017 and May 2018. In the last several years, CTC has acquired developed properties on sensitive land through its Tahoe Livable Communities (TLC) Program and is now seeking to transfer those development rights for projects in Town Centers in keeping with the Lake Tahoe Regional Plan. The demand for these development rights far exceeds the Conservancy's inventory in its land bank. TRPA views the TLC program as key mechanism to accelerate the goals of the Regional Plan and fully supports this program to meet the greater demand.

The two key challenges CTC faces in increasing program capacity to acquire and transfer development rights are: (1) secure additional funding to acquire properties with existing development rights that no longer serve an environmental, economic, or community benefit; and (2) legislative direction that provides the flexibility to sell development rights at less than market value if doing so furthers state planning and Lake Tahoe Regional Plan objectives. Receiving the local support of agency partners will be critical to address these challenges.

Working Group Recommendation:

In support of CTC's ability to secure funding for acquisition and promote legislation enabling alternative disbursement options of development rights, the DRSI Working Group recommends adopting the following two items:

- *Revise and adopt an MOU. (Attachment B, Exhibit 1)*

The revised MOU would expand the CTC's ability to acquire, sell, bank, and transfer all forms of development rights (i.e. CFA, TAU, existing and potential RUU, and land coverage) and align with the authority granted to the CTC by the State of California. The revised MOU also establishes any additional tracking and monitoring needs between TRPA and CTC.

- *Adopt a resolution. (APC Agenda Item V.A.3)*

TRPA, CTC, and NDSL staff drafted a resolution to reaffirm the important role of the land banks within the Tahoe region to accelerate the goals and policies of the Lake Tahoe Regional Plan. The intent is for the resolution to be used in support of legislative proposals to authorize land banks (e.g., CTC) to use alternative transfer or disbursement strategies in cases where the goals of the Lake Tahoe Regional Plan and the applicable state's planning and environmental preservation objectives can better be achieved, and to provide an appropriate incentive that enables projects that align with identified state and regional priorities.

The DRSI Working Group unanimously recommended approval of the revised MOU and the resolution on August 23, 2018 to help accelerate the goals and policies of the Lake Tahoe Regional Plan.

Environmental Review:

TRPA staff prepared the required findings document (Attachment A) and Initial Environmental Checklist (Attachment A, Exhibit 1) to evaluate the effects of the proposed adoption of the revised MOU (Attachment B, Exhibit 1) and resolution (Attachment C). The IEC found that the revised MOU and resolution, as proposed, would not have a significant effect on the environment. Based on this finding of no significant impact (FONSI), no further environmental documentation is required. For the environmental analysis and review of all five DRSI recommendations see Agenda Item Number V.A.1 of this packet.

Contact Information:

For questions regarding this agenda item, please contact Jennifer Self, at (775) 589-5261 or jself@trpa.org.

Attachments:

- A. Environmental Findings & Finding of No Significant Impact (FONSI)
Exhibit 1: Initial Environmental Checklist (IEC)
- B. Adopting Resolution for a Revised MOU between TRPA and CTC
Exhibit 1: Revised MOU
- C. Resolution to Reaffirm Support of the Local Land Banks