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## Coverage Working Group Meeting #3

### MEETING SUMMARY for August 20, 2014

#### **Meeting Attendees (estimated total of 21 persons):**

- **Working Group:** Kevin Prior, California Tahoe Conservancy (CTC); Dan Siegel, CA Attorney General Office; Charles Donohue, NV Division of State Lands (NDSL), Elyse Randles, NDSL; Steve Buelna, Placer County; Eva Krause, Washoe County; Lewis Feldman, Feldman McLaughlin Thiel LLP; Shannon Eckmeyer, League to Save Lake Tahoe; and Eoin Doherty, Environmental Incentives.
- **TRPA Staff:** Joanne Marchetta, John Marshall, Adam Lewandowski, Jennifer Cannon, and Shay Navarro.
- **Other Attendees:** Jason Kuchnicki, Jack Landy, Eric Young, Steve Teshara, Laurel Ames, Jennifer Quashnick, and Ellie Waller.

#### **Meeting Minutes Summary:**

##### **1. Introduction & Background**

TRPA staff presentation on the Excess Coverage Mitigation (ECM) Program and meeting format and goals (see full presentation in Attachment B).

- **Meeting Goal:** Review presented information, then identify the characteristics of an ideal ECM program, and brainstorm possible alternatives for further examination.

##### **2. Land Banks Presentation - Summary:**

Representatives from the NDSL and CTC (land banks) provided presentations on the role of the land banks in the ECM Program, examples of environmental restoration projects, summary of different coverage acquisitions and retirement (potential, existing, and by land capability class if available), and key points on MOU requirements.

Elyse Randles, NDSL, provided Nevada Land Bank presentation highlights:

- Under the existing ECM program, the NV Land Bank has used ECM fees to retire more potential coverage (approx. 69%) than to restore existing coverage (approx. 31%).
- Under the existing ECM program, the NV Land Bank has used ECM fees to retire or restore coverage on high capability land (approx. 97% of potential and 71% of existing coverage) more often than on low capability land (approx. 3% of potential and 29% of existing coverage)
- Large-scale Stream Environment Zone (SEZ) restoration project opportunities may not be available as many of the impaired systems have been restored through EIP (ex. Incline Creek, Rosewood Creek, Third Creek). This may turn the focus on smaller, parcel-sized projects that tend to have higher restoration costs due to the economy of scale of the project.

Kevin Prior, CTC, provided California Land Bank presentation highlights:

- Under the existing ECM program, the CA Land Bank has used ECM fees to retire more potential coverage (approx. 80%) than to restore existing coverage (approx. 20%).

- Under the existing ECM program, the CA Land Bank has used ECM fees to retire or restore coverage on high capability land (approx. 80% of potential and 20% of existing coverage) more often than low capability land (approx. 90% of potential and 10% of existing coverage).
- Current cost to restore hard coverage is \$24 - \$182 per square foot, with \$182 representing a lakefront property that was acquired for multiple purposes.
- There are no requirements or incentives for land banks to restore coverage on sensitive lands, and existing sq. ft. obligations make sensitive and existing coverage restoration unfeasible in most cases.
- ECM policies penalize landowners with excess coverage who redevelop, while the 'do nothing' landowners are not penalized.

**Task 1: Identify the values or characteristics of an ideal Excess Coverage Mitigation (ECM) Program.**

Working Group Discussion:

- Need to incentivize compliance on the land with excess coverage.
- The do nothing land owners are not penalized with this system while those redeveloping pay the price. Though this is typical of code enforcement.
- The land banks end up using potential coverage from properties to meet their obligation and in turn, this prevents the attainment of on-the-ground environmental improvements and restoration.
- There was discussion on charging more fees in sensitive lands since the environmental impact is more substantial. Though this might prevent redevelopment and the enablement of projects. The BMP infrastructure could mitigate the impacts on the redeveloped site as long as the BMP facilities are maintained properly. The mitigation could then be structured to counteract the impacts from the existing excess coverage.
- Need a better understanding of the actual programmatic costs for full environmental restoration of the impacted land.
- One issue is related to the delay with getting the restored coverage commodities to the market. Currently they to wait for two full growing seasons to fulfill environmental restoration requirements before releasing this coverage. Should recognize restoration projects sooner to release the coverage to the market more rapidly. Could release a portion of the restoration credits incrementally based on the attainment of performance criteria. For example, a metered approach could be integrated where 50% of the benefit is provided once restoration is complete and the remaining amount could be provided after the two growing seasons requirement has been fulfilled. This would help alleviate the investment uncertainty with the upfront restoration costs.
- Fee structure has to be sustainable otherwise the program will fail. The fee structure should be the same around the lake and not higher in Nevada in comparison to California.
- The different permit conditions should be examined to help the owner understand what they have on their land and what options are available to them. The ECM Program is in place simply to reduce coverage. The alternatives should provide more flexibility for reducing existing coverage.
- Need to recognize the accomplishments of the existing ECM Program. The amount of existing coverage is below the allowances in all the land capability classes except for 1b (SEZ) and 2 (see Attachment A for more detail on the different land capability classes) and the existing ECM program contributed to this. But, it makes sense to revisit the program to adjust to current conditions.

### Public Comments:

- Laurel Ames (Tahoe Area Sierra Club): Focus on the SEZ restoration, even if it takes more money. Sierra Club thinks SEZ restoration is the most important objective. We need additional public funding specified for SEZ restoration. There are 8,000 lots in SEZ.
- Eric Young (Washoe County): Environmental redevelopment is supported by Washoe County. Significant benefits occur with redevelopment. TRPA needs to ensure that these proposed modifications do not de-incentivize environmental redevelopment.

### The characteristics of an ideal ECM Program include the following (draft):

1. **Mitigation should reflect the water quality impacts of the excess coverage.**
2. **Promote direct coverage removal rather than just paying a fee.**
3. **Do not create unobtainable obligations for the land banks.**
4. **Focus on removing land coverage in capability districts that are over-covered, especially in the Stream Environment Zone (SEZ) Areas.**
5. **Fees should be balanced with the same fee amount established for the entire Lake Tahoe Region (a fee based on an average).**
6. **Incentivize redevelopment and ensure that the ECM Program does not de-incentivize environmentally beneficial redevelopment.**
7. **Establish a sustainable fee structure.**
8. **Simplify the system.**

### Task 2: Brainstorm alternatives and solutions that represent an ideal ECM Program:

#### Working Group Discussion:

- Consider requiring a fee for all permits (not just structural related permits but for all permits) to have more people paying a smaller fee.
- Suggest requiring a fee for all properties with excess coverage rather than the ECM fee for project applicants. This fee should be paid regularly like a stormwater utility fee for all those with over-covered properties.
  - TRPA staff pointed out the practical implementation challenge related to conducting parcel specific verifications for all the parcels in the Tahoe Region to determine which properties are legally over-covered.
  - It was suggested that LiDAR impervious surface land use/land cover data be integrated to determine areas that are over-covered and that the property owner be obligated to challenge the over-covered determination.
  - However, other issues are related with determining which parcels have legally transferred coverage and which property owners used ECM options that involves more than one parcel (2, reducing coverage offsite ; 4, consolidate or adjust parcel lot lines; and 5, mitigate excess land coverage in a conforming Community Plan or Area Plan). This determination would necessitate extensive permit record research.
- We need to ensure that the fee is adequate to cover the land banks costs.

- Why use bank funds for retiring potential coverage? The obligation in the HRAs prevents environmental restoration. Is there a way to use the bank funds to accelerate coverage removal on SEZ lands? Do we need a link with reducing excess coverage with coverage?
- Should use the money for water quality improvements to achieve threshold gain. The fee could be based on different criteria. Need to make sure ECM fees are not used for TMDL projects that are required already.
- The fee places an unfair burden on commercial projects. New development pays more than older developed areas since they already are over-covered. Majority of older developed commercial properties are 95% covered – this condition often requires on-site coverage removal and the payment of a fee. Commercial redevelopment has not been incentivized enough. Commercial projects typically have higher costs, which results in greater mitigation requirements. Although commercial properties have greater pollutant loading than residential, so greater mitigation may be appropriate.
- Consider pursuing broader funding mechanisms such as the California Water Bond (though the eligibility requirements for this funding are unclear).
- Many expressed interest in reducing complexity.
- The focus should be on maximizing coverage reductions in 1b (SEZ) land capability areas to meet the coverage threshold target. Once that threshold is met, the ECM Program could shift to a different priority. The fees could be pooled to support an annual reverse auction.
- The program needs to incentivize change better. Perpetuating the status quo would be bad for the Lake. Most pollutants come from the urban uplands and we have to focus on incentives for change in these areas.
- The ECM Program was a way to give property owners more flexibility in the development of their properties.
- The ECM Program is simply a mechanism to mitigate the over-covered areas compared to the Bailey allowances.
- One of the motivations for this work group is to absolve the disconnection between the use of the funds generated from the ECM fee and the Program intent.
- Based on a past estimation using IKONOS data, there were approximately 438 acres of residential 1B coverage and approximately 323 acres of commercial (including the airport) 1b (SEZ) coverage; however the 2010 LiDAR data would yield improved accuracy. Theoretically, a significant number of land owners would be interested in selling coverage if market price or a higher price can be paid to acquire parcels with 1b (SEZ) coverage.
- TRPA should provide an estimate of existing coverage in Stream Environment Zones. In Nevada, it is a challenge to comprehend where the 1b (SEZ) covered areas are located. In addition, it can be a challenge to find willing sellers of 1b (SEZ) covered areas.

#### Public Comments:

- Laurel Ames (Tahoe Area Sierra Club): The ECM program is a problem so it should be reformed.
- Eric Young (Washoe County): There is an assumption that people are afraid of change and this perception might be limiting what people put on the table, but significant change is ok. Cutting out the land banks is a big change but it might not be a big deal. TRPA has a reputation for complex processes and it is easy for professionals to create a complex system even when it makes it harder on the professionals. We have to simplify the process. A really good program would be much less complicated.

## Alternatives that could represent an ideal ECM Program (draft):

1. **Establish mitigation fee ratios reflecting environmental impact.** *For projects that pay the ECM fee, develop ratios that incentivize mitigation of more impactful coverage. Three variations of this approach are possible: 1) have one ECM fee, but Land Bank obligations would be based on a ratio with less coverage retirement required if it is existing and/ or sensitive land coverage; 2) Projects would pay a greater fee for EC on sensitive land and less for EC on non-sensitive, but land bank obligations would be unchanged; or 3) a combination of both options above with a ratio for applicants and a ratio for land banks. These ratios could incorporate an incentive for on-site restoration, the fees should be consistent across the Region, and the fee could be reduced if it is applied to a wider variety of projects types. This would require additional tracking and reporting on fees by land capability and coverage type.*
2. **Create an annual mitigation fee for all properties with excess coverage rather than charging a fee at the time of redevelopment.** *This could be similar to a stormwater utility district fee where property owners would pay a fee based on impact. This approach would involve using LIDAR data to estimate which properties are over-covered, with the opportunity for property owners to challenge the determination. The fee could be very low if it is applied to all properties with EC. This approach would require extensive review of all historic land capability verifications and project approvals to account for verified land capability and already mitigated coverage.*
3. **Provide ECM Funds to the Land Banks for existing coverage removal.** *This could include establishing a uniform ECM fee across the Region and providing ECM funds to the land banks. The requirements for the use of the funds would be revised to limit the funds to the restoration of existing coverage rather than require the retirement of a specific amount of potential or existing coverage. Variations of this approach could include restricting the ECM fees for restoration of existing coverage in SEZ, or for the restoration of existing coverage in SEZs and other sensitive lands. The existing coverage removal could be implemented through a reverse auction, which would involve marketing a request for bidders to propose a particular developed parcel for acquisition and restoration. The land banks could have the option to cover some of the bid price for specific parcels with other funding sources. The land banks could run and participate in the reverse auction and have access to ECM funds to perform the restoration, but could have another entity acquire and then transfer the land to the land banks so higher than market prices could be paid.*
4. **Place ECM funds in a pool and use them for restoration projects selected through a competitive grant program.** *This option would include setting a consistent ECM fee throughout the Region, and then awarding the ECM funds regularly for acquisition and/or restoration projects through a competitive grant program that allows for participation of private and public parties. The grant program could be narrowly focused on coverage restoration in SEZs or more broadly provide funds for water quality or watershed restoration projects. Specific eligibility criteria would need to be developed, which would ensure accountability in the use of the funds and restrict the funds from being used on projects that are already required such as TMDL compliance or other mitigation programs.*

Future Meeting Date: Next meeting date is anticipated to occur in late September or early October.

- Suggested Topic for Next Meeting: Evaluate, revise, and recommend an approach to update the excess coverage mitigation program.

Data Needs for next Excess Coverage Mitigation Program Meeting:

1. Using the 2010 LiDAR data, estimate the quantity of coverage (except for roads) in 1b (SEZ) lands in different counties located throughout the Tahoe Region to help identify SEZ coverage restoration opportunities.
2. Provide a more accurate estimate of the actual programmatic costs for full environmental restoration of covered land.

## **ATTACHMENT A**

### **Summary of Bailey Land Capability Class Descriptions (1974):**

- Class 1a land consists of extensive areas of steep mountainous land with very shallow soils. These areas are the principal sources of sediment that cause damage to streams, water storage facilities, and structures. Erosion control and diminution of the velocity of runoff are the problems here. A maximum growth of vegetation should be established and maintained on these areas for soil stabilization.
- Class 1b includes stream channels (Stream Environment Zones), marshes, flood plains, and meadows. These lands are naturally wet and poorly drained and are critical areas for management and protection of water resources. Policy for the use of these lands should reflect their value as floodwater and sediment storage areas, wildlife habitat, and fish spawning grounds.
- Class 1c consists of extensive areas of mountainous uplands having little or no soil mantle. It includes the recently glaciated crests of the Sierras and other rocky areas with very shallow soils. Here the harsh climate and lack of soil severely limit plant growth and wildlife. Biotic communities exist in a delicate natural balance. The present vegetation cover should be protected from fire and undue disturbance. The chief value of this land is for watershed protection.
- Class 2 land is suited only for limited recreation, restricted grazing, and selective timber harvest because of erosion hazard or very steep slopes. Because the slope of the land is more than 30 percent, careful grazing and logging practices are necessary to avoid loss by water erosion. This type of land is limited in extent and lies in scattered areas at the base of steep mountain slopes and along entrenched stream valleys.
- Class 3 land is fairly well suited for forestry and low-density housing. The slope of this land varies from 9 to 30 percent and has moderate erosion hazard. Development here must be carefully designed and carried out to keep the land permanently productive. These lands consist of limited areas of moderately steep mountain slopes scattered throughout the basin at lower elevations.
- Class 4 land is well suited for forestry and low-density housing. This land is moderately sloping and has moderate erosion hazard. Careful design and construction practices must be followed. These lands of limited extent occur as scattered areas of moderately steep mountain slopes.
- Class 5 land is moderately well suited for urbanization, forestry, and intensive recreation. This land is flat to moderately sloping and has little or no surface erosion problems. Some limitation of use is required by slope and runoff hazards, as improper use and management may cause severe gully erosion. Maintenance and improvement of drainage will be a continued need on much of this land. More intensive application of special conservation practices is needed than on class 6 lands. This land is chiefly located in flat-lying areas around the margin of the lake.
- Class 6 land is well suited for urbanization, active recreation, and forestry uses. It has some limitations such as minor slope or drainage problems, which influence the manner of development. Easily applied conservation practices are required for safe and maximum utilization of class 6 land. It is made up mostly of gently sloping land around the north side of the basin.
- Class 7 land is very well suited for urbanization, active recreation, or forestry uses. The soil is deep and supports a dense forest cover. It is nearly level and has little or no erosion problems. Drainage is good and the soil has a good capacity for supplying moisture and nutrients for plant growth. Although class 7 land does not have any special problems or limitations for use, it does require good conservation practices to control runoff water and prevent soil loss. All of this land is in the South Lake Tahoe area.

**ATTACHMENT B**