

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE TAHOE REGIONAL PLANNING AGENCY AND
THE NEVADA DIVISION OF STATE LANDS**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into this 16th day of December 2015, by and between the TAHOE REGIONAL PLANNING AGENCY (TRPA), a bi-state agency created under the Tahoe Regional Planning Compact, and the Department of Conservation and Natural Resources, Nevada Division of State Lands (NDSL), an agency of the State of Nevada. This MOU is effective upon the date of the last signature of the last party to sign this agreement. This Memorandum of Understanding replaces entirely the Memorandum of Understanding dated February 18, 1988, between the parties and the former shall control all collection and expenditure of excess coverage mitigation fees going forward.

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, and effective July 1, 1987 and updated December 12, 2012 (hereinafter "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);
- NRS Chapter 277;
- Chapter 355, Statutes of Nevada, 1993

WITNESSETH

WHEREAS, the parties entered into an MOU in August of 1993;

WHEREAS, the parties desire to supersede the previous MOU, with this new MOU; NOW,

THEREFORE, it is agreed as follows:

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 Chapter 90 of the TRPA Code of Ordinances, the definitions contained herein shall govern this Memorandum of Understanding to the extent of any inconsistency.

A. 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, 51 and 6 of the TRPA Code of Ordinances, to be established by NDSL for that portion of the Lake Tahoe Region lying within the State of Nevada.

B. Excess Coverage Mitigation Project

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

C. Excess Coverage Mitigation Fee

The term "excess coverage mitigation fee" shall mean the fee which is required to be paid by the project proponent(s) in order to mitigate projects 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.

D. 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.

E. Hydrologically Related Area(s)

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

F. Other Development Rights

The term "other development rights" which may be acquired, held, and transferred in the land bank, shall include, but not be limited to, residential development rights, allocations, and units of existing development, such as residential units, commercial floor area, and tourist accommodation units.

III. PURPOSE

The purpose of this Memorandum is to establish the respective duties and authorities of NDSL and the TRPA with respect to the operation of the land bank by NDSL on behalf of TRPA for the Nevada side of the Lake Tahoe Region and to set forth the procedures to be followed by TRPA and NDSL with respect to the land bank.

IV. JURISDICTION AND POWERS

Subject to all applicable laws of the State of Nevada, the Compact, and the TRPA Regional Plan and Code of Ordinances, NDSL is designated to operate as a land bank on behalf of TRPA for the purpose of; (1) providing mitigation for excess coverage on behalf of any permit applicant on the Nevada 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 of the TRPA Code of Ordinances; (2)

providing mitigation for any public health and safety project or public outdoor recreation project located on sensitive lands by retiring and restoring hard and soft coverage or disturbed land as provided in Chapter 30 of the TRPA Code of Ordinances; and (3) NDSL shall be engaged in purchasing, selling and transferring coverage or other development rights directly from previously banked land coverage in the land bank or from any parcel in the inventory of the land bank which is eligible to send coverage or other development rights, to any parcel eligible to receive such coverage or other development rights, under Chapters 30 and 51 of the TRPA Code of Ordinances.

V. DUTIES

A. TRPA Duties

1. Assignment of Excess Coverage Mitigation Fees

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

2. Deposit of Excess Coverage Mitigation Fees

When the TRPA receives excess coverage mitigation fees from projects located in Nevada, it shall deposit and hold the fees in an interest-bearing account under its control, until such time NDSL requests disbursements of the funds pursuant to Section V. A. 4. below (Disbursements by TRPA).

3. TRPA Reporting

The TRPA shall deliver to NDSL a report bi-annually (for the Nevada side of the Region) containing the following information pertaining to each permit for which an excess coverage mitigation fee was received by TRPA during the preceding reporting period:

- (a) Location of project by county, hydrologically related area, and assessor parcel number(s);
- (b) Date and amount of fee paid by applicant;
- (c) Amount and type of coverage in terms of square feet as determined under the coverage reduction formula in Chapter 30.
- (d) Total balance of excess coverage mitigation funds.

4. Disbursements by TRPA

TRPA shall disburse all accumulated excess coverage mitigation fees payable to NDSL under Section V. A. 1. above (Assignment of Excess Coverage Mitigation Fees), and any interest accrued thereon, less TRPA's investment administrative fees not to exceed 15% of the interest income, to NDSL 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.B.3. below. Such disbursements shall require approval by the TRPA Governing Board and be made by electronic transfer payable to the "Nevada Division of State Lands", and shall bear the notation "land bank".

5. Transfers of Coverage

Where NDSL agrees to transfer coverage on behalf of a permit applicant through the land bank, pursuant to Chapter 30 of the TRPA Code of Ordinances, TRPA shall, upon NDSL'S request:

- (a) Certify to NDSL the amount and type of coverage or mitigation needed by the permit applicant;
- (b) Determine the eligibility of the sending and receiving parcels; and
- (c) Approve or deny the transfer through a Documentation Letter.

6. Public Service Projects and Public Outdoor Recreation Projects

Where NDSL agrees to carry out mitigation for a public service project or public outdoor recreation project on sensitive land, pursuant to Chapter 30 of the TRPA Code of Ordinances, the procedures set forth for "transfers of coverage" in Section V. A. 5. above (Transfers of coverage) shall apply.

B. NDSL Duties

1. Establishment of Land Bank

NDSL shall take all necessary and appropriate actions to maintain and manage the land bank.

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

- (a) NDSL shall use best efforts to acquire and maintain within the land bank an inventory of hard, soft, and potential coverage and disturbed lands, sufficient to meet the projected needs of the land bank.
- (b) In order to maintain an inventory of coverage for the land bank, NDSL may utilize assets other than excess coverage mitigation fees for the purpose of acquiring and/or restoring land for the land bank.
- (c) Inventory acquired by NDSL may be used to satisfy demand for mitigation of public service projects and public outdoor recreation projects on sensitive lands, and for other transfers of coverage pursuant to Chapter 30 of the TRPA Code of Ordinances, provided that NDSL's responsibilities under Section V. B. 3. below (Use of Excess Coverage Mitigation Fees) are not thereby impaired.

3. Use of Excess Coverage Mitigation Fees

- (a) NDSL shall use excess coverage mitigation fees received from the TRPA solely for the purposes of:

- (1) For no less than 50% of the fees received, paying for assets advanced to the land bank by NDSL, acquiring land (and other development rights attached to the 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, NDSL shall:
 - (i) prioritize the retirement of hard and soft coverage on Stream Environment Zones (as defined in the TRPA Code of Ordinances) and other sensitive lands; and
 - (ii) only retire potential coverage through acquisition of fee title or retirement of development potential on land located in Land Capabilities 1a, 1b, or 1c.
 - (2) NDSL 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 NDSL 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.
 - (3) Administrative expenses and overhead, subject to the limitations in V. B. 3. (b) below.
- (b) NDSL may apply the excess coverage mitigation fees toward payment or reimbursement of its direct costs of acquisition and/or restoration incurred for or through the land bank, which are billed to NDSL by contractors or other

providers of services. These costs include, but are not limited to, revegetation, land and boundary surveys, site inspections, appraisals, title searches, earth moving and demolition. Overhead and other incidental costs of administration, operation and monitoring of the land bank may be budgeted and charged by NDSL against the excess coverage mitigation fees to cover actual costs to NDSL, up to twelve percent (12%) of the aggregate of such fees (including interest) received from TRPA. NDSL shall maintain documentation of its overhead and other incidental costs and submit an annual financial report to the TRPA within 90 days of the close of the fiscal year.

- (c) Notwithstanding the above, NDSL shall have the discretion to expend the interest accrued on mitigation fees and excess coverage mitigation fees within any hydrologic zone.

4. Transfers of Coverage and Other Development Rights

NDSL may enter into agreements for the sale and transfer of coverage to parcels which have not already reached maximum land coverage, pursuant to Chapter 30 of the TRPA Code of Ordinances. In such cases the price paid for the coverage shall be agreed upon by the permit applicant and NDSL. The purchase price shall be paid directly to NDSL. Upon receipt of funds and transaction or escrow closure, transaction data shall be reported by NDSL in the TRPA Commodities Tracking System, if required. NDSL shall then transmit to TRPA the "land coverage information for account files" required for "sending" parcels under Chapter 6 of the TRPA Code of Ordinances through the annual reporting process.

NDSL also may enter into agreements for the sale and transfer of other development rights. All transfers shall be in accordance with TRPA Code of Ordinances.

5. Public Service Projects and Public Outdoor Recreation Projects

NDSL may enter into agreements to provide mitigation for public service projects and public outdoor recreation projects for the purpose of restoring disturbed lands or hard or soft coverage on sensitive lands, as provided under Chapter 30 of the TRPA Code of Ordinances. The terms and procedures set forth for in Section V. B. 4. (Transfers of Coverage and Other Development Rights) above shall apply to the mitigation of such public projects through the land bank.

6. Methods of Retiring Coverage

- (a) Areas containing potential coverage shall be retired by filing with the TRPA a document or documents, in a form acceptable to the TRPA and suitable for recordation, by which NDSL consents to the permanent retirement of potential coverage on the areas described therein.
- (b) 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 natural watercourses and gradients, and removal of refuse.
- (c) Hard coverage shall be restored by demolition 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 Section V. B. 6. (b) above (Methods of Retiring Coverage).

- (d) Within the boundaries of all areas where hard or soft coverage or disturbed land is restored or retired, NDSL shall permanently retire all coverage in the manner provided in Section V. B. 6. (a) above.
- (e) All coverage retirement carried out through the land bank shall be subject to TRPA inspection and review.

7. Annual Report to the TRPA

Within 90 days after the end of each fiscal year, NDSL shall prepare and deliver to the 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. In addition, the annual report shall list:

- (a) All properties within the inventory of the land bank or available to the land bank for restoration and/or retirement of hard, soft, and potential coverage;
- (b) All transfers of coverage that have taken place;
- (c) All mitigation already performed or in progress, but not yet credited towards a permit applicant's project, including but not limited to: (i) square feet and land capability of coverage or disturbed land restored, (ii) acres of land acquired by land capability, (iii) estimated pollutant and stormwater load reductions, and (iv) Soil Conservation and Water Quality threshold gains using EIP Performance Measures.
- (d) All properties on which coverage or disturbed land has been restored or retired since the last annual reporting period made available to TRPA, including:

- the date as of which coverage or disturbed land has been restored or retired;
 - the type of coverage or area restored or retired;
 - the cost per square foot of coverage restored or retired. In computing the cost per square foot, NDSL may use an average based on the cost of restoring or retiring a given type of coverage in more than one coverage mitigation project;
 - the area or amount of coverage that has been restored or retired, in square feet of each type retired; and
 - the mechanism by which restoration or retirement has been accomplished.
- (e) all EIP and non-EIP projects for which NDSL contributed excess coverage mitigation fees.

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 NDSL 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, NDSL shall continue to carry out the duties of Section V.B. 3. above (Use of Excess Coverage Mitigation Fees), as well as related reporting obligations and TRPA shall continue to carry out the duties of Section V. A. 4 above (Disbursements by TRPA), as well as related reporting obligations, for all projects for which mitigation fees were received by TRPA prior to the effective date of termination. Unexpended mitigation fees received by NDSL, 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.

TAHOE REGIONAL PLANNING AGENCY (Signature and Date)



Joanne Marchetta
Executive Director

Approved as to form:

TRPA General Counsel (Signature)



John Marshall
General Counsel

NEVADA DIVISION OF STATE LANDS (Signature and Date)



Charles Donohue
Administrator and State Land Registrar

Approved as to form:

Adam Paul Laxalt
Attorney General

By: 

Lori M. Story
Senior Deputy Attorney General

APPENDIX Y

MEMORANDUM OF UNDERSTANDING BETWEEN
TAHOE REGIONAL PLANNING AGENCY AND
NEVADA DIVISION OF STATE LANDS

JUNE 1993

This Memorandum of Understanding is entered into this 24th day of August 1993, by and between the TAHOE REGIONAL PLANNING AGENCY (TRPA), through its Executive Director as authorized by the Governing Board, and NEVADA DIVISION OF STATE LANDS, by and through its Administrator.

All activities described in this Memorandum of Understanding (MOU) shall be in accordance with the Regional Plan package of TRPA as adopted by Ordinance No. 87-9, as amended from time to time. Activities exempt under this MOU shall not result in the creation of additional land coverage, relocation of existing coverage, or an increase in vehicle trips in excess of that otherwise exempt pursuant to Subsection 4.3.B of the TRPA Code. All activities undertaken by Nevada Division of State Lands pursuant to this MOU shall comply with applicable Best Management Practices (BMPs), and all provisions of the TRPA Code of Ordinances (Code), as it may be amended from time to time, except for the procedural provisions replaced by this MOU, and such guidelines as may be adopted by TRPA.

I. EXEMPT ACTIVITIES

The following activities of Nevada Division of State Lands in addition to those exempt pursuant to Section 4.2. of the TRPA Code, are not subject to review and approval by TRPA provided any related excavation or backfilling work does not exceed 10 cubic yards (unless modified below), occurs during the grading season (May 1 to October 15) in land capability districts 4 through 7 and/or within an existing paved area or compacted road shoulder, and the site is stabilized and/or revegetated within 72 hours to prevent erosion.

A. RECREATION ACTIVITIES

1. Operation of visitor information and interpretive services.
2. Landscaping and revegetation.

B. SIGNING

1. Installation of signs for purposes of controlling property abuse and notice of liability, provided signs are in compliance with Chapter 26 of the TRPA Code.

C. CULTURAL AND HISTORIC RESOURCES

1. Inventory, protection, and maintenance of historic and cultural resources in accordance with applicable TRPA, state, and federal laws and procedures.

D. VEGETATION MANAGEMENT

1. Removal of dead trees on parcels of any size, and removal of dead limbs, and removal of live limbs not resulting in material damage to a tree.

E. STRUCTURES

1. Demolition of structures, improvements or facilities, provided the structure, improvement, or facility is not designated, or pending designation on the TRPA Historic Resource Map, as amended from time to time.

F. FISH AND WILDLIFE

1. Protection of wildlife habitat and fisheries, including forage planting, provided there is no modification to streams.

G. EROSION CONTROL AND RESTORATION ACTIVITIES

1. Installation of erosion control measures such as:
 - a. Sediment basins not exceeding 150 square feet in size.
 - b. Swales
 - c. Rock slope protection not visible from any TRPA-designated scenic roadway or shorezone unit, class I bike paths, or recreation area.
 - d. Rock-lined ditches.
 - e. Willow wattling.
 - f. Access barriers, i.e., bollards and split-rail fencing.
 - g. Installation of temporary erosion control devices.
2. Restoration of disturbed areas of one acre or less provided scarification does not exceed 6" in depth and excavation and filling does not exceed 20 cubic yards.

II. QUALIFIED EXEMPT ACTIVITIES

The following activities of Nevada Division of State Lands are not subject to review and approval by TRPA, provided Nevada Division of State Lands certifies, on a form provided by TRPA, that the activity does not result in

the creation of additional land coverage or relocation of land coverage, excavation and backfilling does not exceed 25 cubic yards (unless modified below), any grading occurs during the grading season (May 1 to October 15) in land capability districts 4-7 and/or within an existing paved area or compacted road shoulder, and the site is stabilized and/or revegetated within 72 hours to prevent erosion, and the activity is in conformance with the applicable provisions of the TRPA Code. The form shall be filed with TRPA at least five working days before the activity commences. For those activities involving in excess of 25 cubic yards of excavation (as provided below), Nevada Division of State Lands shall submit the form to TRPA at least 30 days before the activity commences. The following activities are in addition to those activities deemed "Qualified Exempt" pursuant to Section 4.3 of the TRPA Code.

A. VEGETATION MANAGEMENT

1. Removal of up to 100 live trees six inches d.b.h. or larger, per year within a project area, provided all live trees to be removed are marked by a qualified forester as defined in Chapter 2 of the TRPA Code.
2. Protection and enhancement of rare, endangered, threatened, sensitive, and special interest plant species.
3. Sales of fuel wood and tree removal permits on State Lands property, provided that all vehicles and/or equipment are restricted to existing roads and paved areas, all trees are marked by a qualified forester, and any tree removal is in accordance with the limitations specified in paragraphs 1 and 2, above.
4. Planting to diversify vegetation with species listed on the TRPA-recommended plant list.
5. Prescribed burning under the supervision of a qualified forester in accordance with Chapter 72, Section 72.3.E and 72.4.B of the TRPA Code.
6. Tree removal for public health and safety pursuant to Section 71.4.E(2) of the TRPA Code.

B. EROSION CONTROL AND RESTORATION ACTIVITIES

1. Installation of retaining walls not exceeding 25 feet in length and 3 feet in height, provided that if located within a TRPA-designated scenic roadway or shoreline unit, the wall design is consistent with the TRPA Design Review Guidelines (Chapter 1, Section C(7) and Section 30.13.C(2) of the TRPA Code.
2. Restoration of disturbed areas not exceeding 2 acres, provided scarification does not exceed 6" in depth.

III. TREATMENT AND ACCOUNTING OF COVERAGE

It is understood by Nevada Division of State Lands and TRPA that the activities set forth herein may result in a requirement to mitigate existing excess coverage. Further, many of the activities involve removal of existing land coverage or restoration of disturbed lands.

Chapter 38 of the Code provides for the accounting, tracking, and banking of coverage in conjunction with Chapter 20. Nevada Division of State Lands shall report to the Executive Director of TRPA annually on the status of compliance with all excess coverage mitigation, coverage removal and restoration requirements as related to all activities undertaken pursuant to this MOU.

IV. LOSS OF EXEMPTION


Any exempt activity set forth herein shall be considered a project requiring TRPA review if the Executive Director determines that, because of unusual circumstances, the activity may have a substantial effect on the land, air, water, space, or any other natural resource in the Region.

V. TERMINATION

This MOU may be terminated by either party upon sixty (60) days notice in writing.


NEVADA DIVISION OF STATE LANDS

DATED: Aug. 24, 1993


Pamela B. Wilcox, Administrator

TAHOE REGIONAL PLANNING AGENCY

DATED: July 30, 1993


David S. Ziegler, Executive Director