

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

This Memorandum of Understanding is entered into this 17th day of March, 2016, 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 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, 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.

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 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.

B. 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.

C. 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 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, Hydrologically Related Areas

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.

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 Compact, TRPA Regional Plan, and TRPA Code of Ordinances, the CONSERVANCY is designated as a land bank for the purpose of: (1) 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; (2) 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; and (3) selling and transferring coverage from any parcel in the inventory of the land bank which is eligible to send coverage to any parcel eligible to receive such coverage under Chapter 30.

V. DUTIES

A. TRPA Duties.

1. 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.

2. 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.A.4. below.

3. 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:

- (a) location of project by state, county, hydrologically related area, and assessor parcel number(s);
- (b) 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 for the requested specified time period.

4. Disbursements by TRPA.

TRPA shall disburse all accumulated excess coverage mitigation fees payable to the CONSERVANCY under Section V.A.1. 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.B.3. 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".

5. Transfers of Coverage.

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

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

B. CONSERVANCY Duties

1. 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.

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

- (a) The CONSERVANCY 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, the CONSERVANCY 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 the CONSERVANCY 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, provided that the CONSERVANCY's responsibilities under Section V.B. 3. below are not thereby impaired.

3. Use of Excess Coverage Mitigation Fees.

- (a) The CONSERVANCY shall use excess coverage mitigation fees received from 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 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.
 - (2) 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.

(3) administrative expenses and overhead, subject to the limitations in (b) below.

(b) 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.

4. Transfers of Coverage.

The CONSERVANCY 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. In such cases the price paid for the coverage shall be agreed upon by the permit applicant and the CONSERVANCY. The purchase price shall be paid directly to the CONSERVANCY. Upon receipt of funds and transaction or escrow closure, transaction

data shall be reported by the CONSERVANCY in the TRPA Commodities Tracking System, if required. The CONSERVANCY shall then transmit to TRPA the "land coverage information for account files" required for "sending" parcels under Chapter 6 through the annual reporting process.

5. Public Service Projects and Public Outdoor Recreation Projects.

The CONSERVANCY may enter into agreements to provide mitigation for public service projects and public outdoor recreation projects by restoring disturbed lands or hard or soft coverage on sensitive lands, as provided under Chapter 30. The terms and procedures set forth for "transfers of coverage" in Section V.B.4. 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 TRPA a document or documents, in form acceptable to TRPA and suitable for recordation, by which the CONSERVANCY 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 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 (b) above for restoration of soft coverage.

(d) Within the boundaries of all areas where hard or soft coverage or disturbed land is restored, the CONSERVANCY shall permanently extinguish all coverage in the manner provided in (a) above.

(e) All coverage retirement carried out through the land bank shall be subject to TRPA and/or MOU permitting partners inspection and review.

7. Annual Report: 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:

- (a) the current inventory of parcels credited or available to the land bank for restoration and/or retirement of hard, soft, and potential coverage; and
- (b) 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.

8. 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:

- (a) all monies expended and received by the CONSERVANCY on behalf of the land bank;

- (b) all properties within the inventory of the land bank;
- (c) all areas 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 restored or retired;
 - 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.
- (d) all EIP and non-EIP projects for which the CONSERVANCY contributed excess coverage mitigation fees.

In computing the cost per square foot of coverage retired, the CONSERVANCY may use an average based on 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.B.3., as well as related reporting obligations and TRPA shall continue to carry out the duties of Section V.A.4., 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