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Coverage Working Group Meeting #4

MEETING SUMMARY for October 2, 2014

Meeting Attendees (estimated total of 17 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 Lucia Maloney.
- **Other Attendees:** Jennifer Quashnick, Bob Twiss, and Jack Landy.

Meeting Goal: Review and discuss ECM Program alternatives and if possible, identify recommendation(s) to further refine. The recommendation should cover two sides: 1) How the ECM fee is collected and 2) How the ECM fee is spent.

Meeting Outcomes:

1). Outcomes for how the Excess Coverage Mitigation (ECM) Fee is collected:

- A. Establish a uniform ECM fee within each state (i.e., one fee in NV and one fee in CA). *Intent: simplify ECM fee structure, and remove different fees in different HRAs since the fees can be used in any HRA.*
- B. Consider the market costs of coverage when resetting the ECM Fee. The fee should not account for the entire cost of purchasing land and restoring coverage; instead it should reflect average market cost of potential coverage or a ratio/ percent of market cost of hard coverage. *Intent: set a balanced fee that accounts for coverage costs but does not significantly increase barriers to redevelopment.*
- C. Regular ECM Fee updates should occur with a mechanism for updates based on changes in an index of average home prices or land value to allow for regular updates without appraisals or Governing Board approval. *Intent: streamline and simplify the fee update process.*
- D. Encourage applicants to directly reduce coverage onsite by offering them "extra credit" for onsite restoration. For example, if a project is required to mitigate 100 square feet, they can pay the fee on the whole 100 square feet or remove 75 square feet on site. This extra credit could be adjusted to grant additional credit for sensitive coverage removal, onsite. *Intent: encourage onsite coverage removal particularly in environmentally sensitive areas.*

2). Outcomes for how the ECM Fee is spent:

- A. Allow land banks to use the ECM funds for existing coverage restoration, water quality projects, Stream Environment Zone (SEZ) restoration/ enhancement, or sensitive land acquisition. The retirement of potential coverage would be discouraged use of ECM funds. Develop agreed upon criteria for these types of projects that would address concerns such as accountability. *Intent: Implement projects that have the greatest environmental benefit to the primary thresholds affected by excess coverage.*
- B. Include a requirement for land banks to use some of the ECM funds for restoration of existing coverage. The coverage restoration obligation would be based on a ratio. For example, for every 10 square feet of coverage addressed through the ECM fee, the land banks must either restore one square foot of existing coverage in SEZs, or two square feet of existing coverage in other sensitive lands, or three square feet of existing coverage in non-sensitive areas. *Intent: maintain a clear nexus to coverage restoration and promote coverage removal in more environmentally sensitive areas.*
- C. Prohibit ECM fees from being used to fund projects that are gaining TMDL credit or are required mitigation through other programs. ECM fees can fund stormwater projects, but they must be in addition to what jurisdictions are doing to meet TMDL requirements. *Intent: ensure ECM fees do not fund projects that are already required.*
- D. Annual reporting from the land banks should include: amount and land capability of coverage restored, estimated load reduction from water quality projects, and size and land capability of acquisitions and easements. *Intent: track implementation progress regarding environmental threshold gains.*

Meeting Minutes Summary:

Introduction & ECM Alternatives Overview:

TRPA staff recapped progress made during the previous Coverage Working Group Meeting #3 held on August 20th, 2014. At the previous meeting, the work group identified 8 characteristics of an ideal Excess Coverage Mitigation (ECM) Program; and subsequently, TRPA staff added two supplementary considerations related to implementation effectiveness. TRPA staff summarized the outcomes from the past meeting, presented an evaluation of different alternatives for the ECM Program, provided recommendations, and offered an overview of the meeting goals (see alternatives evaluation presentation in Attachment A)¹.

Work Group Discussion on the ECM Alternatives:

- Clarification was provided for Alternative 3 (Reverse Auction): TRPA is not allowed to acquire land; consequently the land banks would need to acquire land where coverage would be removed.
- Representatives from the NV Land Bank commented that the staff summary reporting of the average annual ECM fees collected for the region seems higher than in reality (~\$700,000). In Nevada, the fees allocated are typically around \$300,000 per year. A participant pointed out that the

¹ See the staff memo for Coverage Work Group #4 for more information: http://www.trpa.org/wp-content/uploads/Coverage_WG_Memo_with-Attachments.pdf

~\$700,000 figure was an aggregate of both NV and CA fees and in 2008, \$1.3 Million in ECM fees were paid for the redevelopment project across from Heavenly and this value likely inflated the averages.

- The focus of alternatives 3 and 4 is less about square footage of coverage and more about environmental restoration.
- Discussion on Alternative 4 (Acquisition, Restoration, and Water Quality Project Option): Is the grant program a suggestion or a requirement? Response: A grant program is not a requirement; rather it is an option for how to implement this alternative.
- Discussion on “automatic” fee update: Suggestion to use “regular” update instead of “automatic”, with a scheduled review period (such as “Every five years”, with TRPA appraising). The work group discussed complexities with scheduled review periods. The work group agreed to exclude scheduled review periods from the recommended alternative and suggested that discretionary appraisals be considered.
- A recommendation was provided to tie the fee to an index, such as a housing index.
- If the fee is uniform and averaged across the region, the result could increase the California fee but decrease Nevada’s fee amount.
- A suggestion was offered to use a well-reasoned ratio with semi-rigid criteria, where land banks could send a letter to TRPA when they choose to not meet criteria for a specific project. The well-reasoned ratio would ensure accountability.
- Point of clarification: California applies for funding for individual projects while Nevada has funds “staged” in advance.
- An issue in Nevada is related to having insufficient funds for beneficial coverage removal projects.
- Property owners could undertake on-site mitigation themselves to gain the same credit that land banks can earn. The downside is that this could result in “postage stamp” mitigation.
- Discussion on reporting metrics: Participant suggested using an alternative metric instead of square feet of coverage. Perhaps something more water quality focused such as the amount of sediment loading reduction (similar to TMDL).
- Some participants expressed concern with funding projects already required by TMDL. TRPA staff noted that there are similar programs now with stormwater, where funds go toward load reduction (within the region) but not to the local jurisdiction specifically. Work group agreed that the fee would not go toward the local jurisdiction’s TMDL goal.
- The suggestion to incentivize on-site mitigation is attractive when you consider scenic impacts.

Public Comments:

- Jennifer Quashnick (Tahoe Area Sierra Club) – Pointed out that there are thresholds for both soil and water quality. Concerned about merely focusing on water quality rather than considering the other thresholds. Any changes to the code should include a comprehensive environmental analysis.

Work Group Discussion on Recommendations for ECM Program:

- Participants in support of different fees for each state particularly since the banks do not transfer mitigation across state lines. Several in favor of separate state fees.
- Fee Collection Discussion:
 - Reset base fee for each state based on one time qualified appraisal (one in NV and one in CA looking at private transactions and land banks) with mechanism for automatic update (such as a real estate index or consumer price index, but with no regular set review). Most of the

work group was in favor of this idea; however there was a concern that the appraisal might need to be readjusted. For example if the fee would be significantly higher, they might need to regroup to formulate a solid recommendation for the Governing Board. The work group should be responsible for promoting a feasible recommendation.

- TRPA next steps may need to include conceptual approach approved by the TRPA boards such as the Governing Board, then conduct appraisal, prepare code amendments.
 - Suggest that the fee could be a ratio tied to the appraisal but not the full value of the appraisal.
 - An issue to consider is that the appraisal could be too high and the ECM fee could prevent environmentally beneficial redevelopment. For example, the California appraisal was \$30 per square foot yet it was negotiated to \$8.50 per square foot. Mitigation only occurs when redevelopment occurs, so setting the fee too high would be counter-productive.
 - One participant mentioned that the different counties could differ in the fee amount.
- Fee Spent Discussion:
 - Several offered support for using the fees to remove existing coverage in sensitive land, alternative 4 (Water Quality Project Focus) with modifications particularly for targeting projects that accelerate the attainment of multiple thresholds, and alternative 1A (Land Bank Ratio) in combination with alternative 3 (Focus on Existing Sensitive Land Coverage) to establish a ratio to incentivize existing coverage removal and sensitive land mitigation. Alternative 1A could be modified with a ratio that encourages more coverage removal in SEZs.
 - A couple participants were more comfortable with every mitigation project having some amount of coverage removal.
 - Several provided support for the flexibility offered in alternative 4 (Water Quality Project Focus); however some participants expressed concerns about this alternative.
 - Concern was expressed about losing the purpose or nexus to excess coverage mitigation with the establishment of Alternative 4 (Water Quality Project Focus). Beware of divorcing the spending of funds from the expressed purpose of the ECM Fee.
 - The focus should be on existing coverage removal in SEZs. Priority could be provided for soil threshold attainment. There is a need for a clear ratio for obtaining adequate mitigation. The ratio could be less than 1:1 to give credit for low capability land restoration. Need to find out what fee level would be high enough to cover proposed ratios.
 - The land banks would need funds provided up front particularly with a ratio requirement. The land banks expressed concern with being priced out from acquiring some high-priced parcels with coverage removal benefits.
 - Semi-rigid criteria could be established.
 - Other excess coverage impacts: lack of canopy cover and scenic impacts.
 - Suggest that TRPA come back to the group with firmer criteria for Alternative 4 (Water Quality Project Focus) to discuss further.
 - The Kingsbury Middle School could have some coverage removal potential particularly if it is environmentally sensitive land. Most of the coverage removal projects will be located in residential areas.
 - Clarification: the ECM fee should not be considered a funding mechanism to take away from local jurisdiction TMDL obligations.

- Suggestions for Alternative 1A (Land Bank Ratio):
 - Land banks are agreeable for taking 'potential' coverage mitigation off the table, but they would like more flexibility for how to use the funds, particularly since existing coverage restoration is much more difficult and costly than current requirements.
 - Beware that a ratio requirement in reality might result in overall reduced coverage retirement than in the past.
 - General group consensus that we need criteria and accountability.
 - General group preference to develop better guidelines/criteria and minimize transaction/administrative costs.
 - General group consensus that we don't have to split the funding; however the program should create incentives for mitigation that focuses on low capability lands and existing coverage removal.
- Discussion on what could be included as criteria for Alternative 4 (Water Quality Projects):
 - Coverage restoration;
 - Threshold gain particularly for soil, water, and/or scenic thresholds;
 - Do not use loading credit for local TMDL requirements;
 - Loading reduction should focus on connected waterways;
 - Ratio but with safety valve; and
 - Create reporting tools for load reduction (the banks cannot calculate load reduction potentials with the current tools they have available to them).
- TRPA will pull together information on average cost for purchasing coverage. Can use data up to 2011/2009 to help inform the development of a ratio.
- Support was offered for a version of Alternative 1A (Land Bank Ratio) in addition to a land bank commitment to require a certain amount of coverage removal based on a ratio.
- Land banks can satisfy their obligation using a mixture of different options with a simple ratio (version of Alternative 1A, Land Bank Ratio), Water Quality Project (Alternative 4), along with new annual reporting requirements.
- Clarity is needed to consistently link the option with coverage reduction (to avoid disconnecting from the original intent of the program); however flexibility should be provided on the use of funds for select projects crucial to threshold gain.
- General group consensus for building in accountability through some sort of enhanced reporting. When the funding is used for more than coverage, accountability is required to report on other benefits to justify the use of the funds.
- Several participants were in support of adding a requirement for a minimum ratio of existing coverage removal. Funds can also be used for sensitive land acquisition, stream restoration, and water quality improvement efforts.
- Items to flesh out: identify potential options for reporting modeled loading reductions (TMDL) expected from water quality projects.

Public Comments:

- Jennifer Quashnick (Tahoe Area Sierra Club) – Can TRPA staff clarify the type of environmental review that will be conducted? My recommendation would be to look at the impacts before APC and before any formal recommendation is offered.
 - TRPA staff response: Once options are refined, the environmental review will start with the standard initial environmental checklist. The ECM Program recommendations and the HRA Coverage recommendations will be reviewed as a package. The level of environmental

review will depend on the specific recommendations and their possibility for significant environmental impacts.

Next Steps: TRPA Staff will send out a Doodle poll to schedule the next meeting (expected to occur in January or early, 2015). The next meeting goal will be to present additional information and discuss, refine, and recommend an approach to update the ECM Program.

Data Needs for the next Excess Coverage Mitigation Program Meeting:

1. TRPA will summarize the best available information on average cost for purchasing coverage over the past decade. The goal for this summary is to help inform the development of a ratio.
2. Refine Alternative 4 criteria options (discussed above) and bring this to the group for discussion.
3. Explore sources of information potentially helpful for informing ratio development and regular updates for the fee.

Contact Information: If you have any questions, please contact Jennifer Cannon, Associate Planner at 775.589.5297 or jcannon@trpa.org or Adam Lewandowski, Long Range Planning Manager at 775.589.5233 or alewandowski@trpa.org .


ATTACHMENT A

Overview of the Excess Coverage Mitigation Program Options

Coverage Transfer Working Group Meeting #4
October 2, 2014


     

Meeting Goals


- Refine alternatives
- Recommendation(s)


Photo Credit: Jennifer O'Connell



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Characteristics of an Ideal ECM Program



1. Mitigation reflects water quality impacts of EC
2. Promote direct coverage removal rather than pay a fee
3. Do not create unobtainable obligations for the land banks






Photo credit: Jennifer Cannon




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Characteristics - Continued, 2-





4. Focus on over-covered areas - SEZs
5. Establish uniform region-wide fee
6. Incentivize redevelopment
7. Establish a sustainable fee structure
8. Simplify the system

Before:




After:






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Characteristics - Continued, 3-

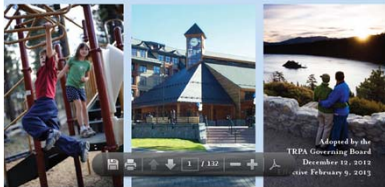


TRPA Staff Identified:

- 9. Feasible implementation
- 10. Reduces controversy



REGIONAL PLAN
TAHOE REGIONAL PLANNING AGENCY | *lake tahoe*




Adopted by the TRPA Governing Board
December 16, 2013
and February 9, 2014




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Alternatives Overview



Alternative	How Fee is Spent	How Collected
1A: Land Bank Ratio	Ratio	Uniform fee
1B: Applicant Ratio	Same as current	Ratio
1C: Land Bank & Applicant Ratios	Ratio	Ratio
2: Regional Excess Coverage Fee		Regional fee
3: Focus on Existing Sensitive Land Coverage	Restore existing coverage	
4: Acquisition, Restoration & Stormwater	Acquisition, restoration & water quality projects	


Can mix & match options







Alternative 1A – Land Bank Ratio

1. Establish coverage retirement ratios reflecting environmental impact.




 - A. Land Bank coverage retirement obligation ratio:
 - ↓ Less coverage retirement required if it is existing and/or sensitive
 - ↑ More coverage retirement required if it is potential and/or non-sensitive land coverage.
 - **Addresses: how fee is spent**






Alternative 1A Evaluation

- Pros:
 - Greater (direct) coverage removal in sensitive areas, can focus on over-covered areas
 - ↑ land bank flexibility
- Cons:
 - Difficulty determining a ratio & ↑ complexity



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Alternative 1B – Applicant Ratio



1. Establish mitigation fee ratios reflecting environmental impact.

B. Project applicants would pay:

- ↑ Greater fee for sensitive land
- ↓ Less for non-sensitive lands
- **Addresses: how fee is generated**






Photo credit: CTC




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Alternative 1B Evaluation



- Pros:
 - Fees reflect coverage impacts
 - Mitigation reflects water quality impacts
- Cons:
 - Difficulty with determining fee ratio & ↑ complexity
 - Could discourage redevelopment on sensitive land, where redevelopment and associated water quality improvements could be most beneficial.



Alternative 1C – Ratios



1. Establish mitigation fee / coverage retirement ratios reflecting environmental impact.






Photo credit: CTC

C. Combination of A & B: fee ratio for applicants & coverage retirement ratio for land banks.



- **Addresses: how fee is collected & spent**



Alternative 1C Evaluation




- Pros:
 - Greater (direct) coverage removal in sensitive areas, can focus on over-covered areas
 - Fees reflect coverage impacts
 - Mitigation reflects water quality impacts
 - ↑ land bank flexibility
- Cons:
 - Difficulty with determining ratio & ↑ complexity
 - Could discourage redevelopment






Alternative 2 – Regional EC Fee

2. Create an annual mitigation fee for all properties with EC rather than charging a fee during redevelopment.



- Based on impact
- Determined by LiDAR, allow challenges
- **Addresses: how fee is generated**


Alternative 2 Evaluation

- Pros:
 - Promote redevelopment of over-covered parcels, ↑ compliance, reflects water quality impacts
 - Consistent revenue
- Cons:
 - Very controversial, legal challenges
 - Great difficulty with implementation:
 - Accounting for already mitigated excess coverage (EC) or legally transferred coverage
 - Parcel level analysis, ↑ field verification
 - Expensive updates (dev. is dynamic), dip into collected fees (↓ restoration)



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Alternative 3 – Existing Coverage Restoration



3. Use ECM Funds only for existing coverage removal.

- Could focus only on SEZs
- Land banks could use a reverse auction
- **Addresses: how fee is spent**










Photo credit: CTC




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Alternative 3 Evaluation




- Pros:
 - Accelerate coverage removal on sensitive lands
 - Simplifies the system
 - Feasible implementation
 - Opportunity to involve private land owners
 - Low controversy




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Alternative 4 – Acquisition, Restoration, & Water Quality



4. Use funds for acquisition, restoration, & water quality projects


- Expands fee use to:
 - SEZ restoration/acquisition
 - Water quality improvement
- Competitive grant program or land banks
- **Addresses: how fee is spent**






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Alternative 4 Evaluation



- Pros:
 - Accelerate restoration of sensitive lands
 - Promotes direct coverage removal
 - Potential for broad environmental benefits
 - Simplifies the system
 - Feasible implementation
 - Opportunity to involve private land owners
 - Low controversy




How Fee is Spent




Initial Recommendations:

- 3: Existing Coverage Restoration
- 4: Acquisition, Restoration, & Water Quality



How Fee is Collected



Initial Recommendation:

- Uniform ECM fee:
 - Revised version of existing fee
 - Same across states & HRAs
 - One time appraisal with automatic updates