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MEMORANDUM

Date: August 20, 2014
To: Coverage Working Group
From: TRPA Staff
Subject: Review of Excess Coverage Mitigation Program

Requested Action:

At the August 20 meeting, the working group will be asked to review information on the existing excess coverage mitigation (ECM) program, identify the characteristics of an ideal ECM program, and brainstorm possible alternatives or options to improve the ECM program.

Overview:

At their annual priority setting workshop in 2014, the Governing Board directed staff to address improvements to the ECM program as a second phase to the review of coverage transfers across hydrologic zones. The Regional Plan Implementation Committee (RPIC) endorsed formation of the Coverage Working Group, who met on March 10 and July 8, 2014 to develop recommendations on coverage transfers. The Governing Board requested that this working group also develop recommendations to improve the ECM program.

At the August 20, 2014 Coverage Working Group meeting, the working group will be asked to review information on the existing ECM program; identify the characteristics of an ideal ECM program; and brainstorm possible alternatives to examine further at the fourth working group meeting. At the fourth meeting, the working group will be asked to further refine the alternatives and make a recommendation on any changes to the ECM program. Once the working group develops recommendations, they will be advanced to the Advisory Planning Commission for review and consideration prior to consideration by RPIC and the full TRPA Governing Board. The following section provides background information on the ECM Program to provide a basis for discussions at the August 20th meeting.

Background:

Excess land coverage is essentially existing “grandfathered” coverage that exceeds the amount of allowable coverage in a project area. Excess land coverage is defined as the amount of legally-existing TRPA-verified land coverage existing within a project area that exceeds the base allowable coverage and any approved transfers of coverage¹. TRPA regulations require project applicants to mitigate a portion of the excess coverage at the time that a project area is redeveloped. Certain project types are exempt from excess coverage mitigation requirements including the reconstruction of buildings damaged by fire or other calamity, and minor utility projects². The amount of excess coverage mitigation required is based on the amount of existing excess coverage and the project cost, so a larger project would be required to mitigate more coverage than a smaller project on the same parcel³.

¹ See TRPA Code section 30.4.1 for information on base allowable coverage; Code section 30.4.2 for information on eligible coverage transfers; and Code section 30.6.1.A for details on how excess coverage is calculated.

² See TRPA Code section 30.6.2 for a complete listing of exemptions from excess coverage mitigation requirements.

³ See TRPA Code section 30.6.1.C for details on determining the amount of excess coverage mitigation required.

Excess land coverage can be mitigated through any of the following options or combinations of options (pursuant to Section 30.6.1, provided in Attachment A):

1) Reduce coverage on-site as part of the redevelopment project.

Redevelopment projects that mitigate coverage by reducing it on-site must restore the coverage as part of the project and may reduce coverage in any land capability district on-site.

This approach tends to be used somewhat infrequently. When it is used, it tends to be by larger projects that have a large project area and/or a significant amount of existing coverage.

2) Reduce coverage offsite.

Coverage may be decreased by acquiring land with existing coverage and restoring the coverage. Coverage may be restored in any land capability district if it is within the same Hydrologically Related Area (HRA) as the project. As part of the 2012 Regional Plan Update, the Code was amended to also allow off-site coverage restoration in a different HRA if the restoration occurs on more sensitive land than the project area.

This approach tends to be used very infrequently due to the cost and difficulty in acquiring off-site coverage to mitigate. This approach to coverage mitigation may be used slightly more frequently in the future as a result of recent changes that allow coverage reduction in different HRAs.

3) Pay a land coverage mitigation fee.

Projects may pay an in-lieu fee instead of directly reducing coverage. The fee is based on the square feet of coverage to be mitigated, but includes a minimum fee of \$200⁴. The fee is consistent within California, but varies between HRAs in Nevada. The ECM fees are distributed to Land Banks (California Tahoe Conservancy and Nevada Division of State Lands) to purchase and retire potential coverage and/or restore existing coverage.

Memorandums of Understanding (MOUs) between TRPA and the land banks provide additional detail on the use of the ECM fee (see Attachment B). The MOUs require that the land banks mitigate one square foot of excess coverage with one square foot of restored or retired coverage. The MOUs do not specify which land capability districts the coverage reduction should occur in, nor do they differentiate between potential and existing coverage. The Land Banks can, and in some cases have, put additional criteria on the use of ECM fees in order to increase environmental benefits. As part of the 2012 Regional Plan Update, the Code was amended to allow ECM fees to be used in any HRA so fees could be aggregated for use in high priority restoration projects, and to remove a backlog of mitigation needs in HRAs where no coverage was available.

This approach is used by the majority of projects.

4) Consolidate or adjust parcel lot lines.

Projects may consolidate contiguous parcels as part of a project approval. This approach essentially creates a larger parcel with more allowable coverage. This approach is used very infrequently and only in cases where the project applicant owns or can acquire an adjacent parcel with additional allowable coverage.

⁴ See TRPA Rules of Procedure section 10.8.5.C for a schedule of mitigation fees.

5) Mitigate excess land coverage in a Community Plan or Area Plan

A Community plan or Area Plan can proactively mitigate coverage at a larger scale than individual projects. This approach requires that the Plan mitigate the same amount of coverage as would be required if all of the affected parcels individually mitigated coverage (see Code Section 30.6.1.B.5, provided in Attachment A), or the excess coverage must be within a comprehensive coverage management plan that reduces the total amount of coverage and reduces coverage in Land Capability Districts 1 and 2 as required by TRPA Code section 13.5.3.B.

This approach is used infrequently and can only be implemented at the time a Community Plan or Area Plan is developed rather than at the time a project is proposed.

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

Attachments:

- A. Excerpt of TRPA Code section 30.6.1 (Implementation of ECM program)
- B. MOUs for the California Land Bank and the Nevada Land Bank