

**LAND BANK EXCESS COVERAGE MITIGATION
MEMORANDUM OF UNDERSTANDING**

Summary: Staff recommends authorization for updates to the California Tahoe Conservancy's (Conservancy) 1988 Land Bank Memorandum of Understanding with the Tahoe Regional Planning Agency (TRPA) to reflect recent amendments to Chapter 6 and 30 of the 2012 TRPA Regional Plan and Code of Ordinances.

Location: California side of the Lake Tahoe Basin.

Fiscal Summary: For fiscal year 2014-15 the Conservancy received \$233,000 in Excess Coverage Mitigation revenue from TRPA. It is expected that similar amounts will be available this year and in future fiscal years.

Recommended Action: Adopt Resolution 16-03-05 (Attachment 2).

Background

The Conservancy Land Bank performs two primary functions: The first is the mitigation of excess coverage (through land coverage acquisition and retirement) on behalf of permit applicants who pay excess coverage mitigation (ECM) fees to TRPA. The second is to sell and transfer coverage to permit applicants whose parcels are eligible to receive such transfers, and who need additional coverage to complete their projects. This staff recommendation addresses updates to the Land Bank Memorandum of Understanding (MOU) applicable to the first function. The specific changes are shown in Attachment 1.

As more fully explained below, the role of the Conservancy Land Bank in ECM involves the acquisition, retirement, and in some cases the restoration (through revegetation) of land coverage. Land coverage refers to any covering (both existing and potential) over the natural surface of the ground that prevents water from percolating into the ground preventing the natural filtering function of the soil and the up-take of nutrients by vegetation. Coverage reduction is a key concept in the 2012 TRPA Regional Plan

objectives because land coverage increases the volume and velocity of runoff, accelerating erosion and the transport of sediment to Lake Tahoe. On certain erodible soil types, steep slopes, or Stream Environment Zones (SEZ), the total amount of allowed coverage may be as low as one percent of the total project area. The removal of hard coverage (i.e., structures or driveways) or soft coverage (i.e., bare and compacted soil) and the revegetation with native grass and shrubs prevents erosion and improves water quality through infiltration of runoff.

Hard coverage existing prior to the adoption of 1987 Regional Plan is allowed to remain under the Regional Plan until such time as the coverage is proposed for modification (e.g., a home remodel) requiring a TRPA permit. If during the permitting process TRPA determines the coverage exceeds the “base allowed” the project is deemed to be “over covered” (i.e., the project contains more existing coverage than what the land capability allows) and as a condition of obtaining a permit the landowner must mitigate a portion of the excess coverage during the TRPA permitting process. This mitigation can occur either by reducing or restoring existing coverage onsite or on a suitable offsite location, or payment of the ECM fee to TRPA. The majority of TRPA project applicants pay the ECM fee. Under Chapter 6 and 30 of the TRPA Code of Ordinances (Code) a designated land bank is eligible to receive these fees to perform coverage mitigation through the acquisition, retirement, and in the case of hard or soft coverage the restoration of the coverage through revegetation.

In 1988, the Conservancy Board authorized the creation of the Land Bank and Land Bank Program including funding for initial acquisition and restoration activity, with the understanding that the Land Bank would continue to operate over time with funding from TRPA ECM fees. The day-to-day operation of the Land Bank is governed by the 1988 MOU between TRPA and the Conservancy. The MOU addresses both the receipt of ECM fees from TRPA and the implementation of ECM projects carried out by the Conservancy to restore coverage on Land Bank parcels.

As a result of the 2012 TRPA Regional Plan update process, the TRPA convened a nine-member Coverage Working Group to collaboratively develop recommendations for improving TRPA’s ECM program Code provisions. The year-long process resulted in meaningful, careful, and measured improvements adopted by the TRPA Governing Board, which are reflected in amendments to the Code and the MOU.

Project Description

The specific modifications to the MOU shown in Sections V.B.3. (1) & (2) (Attachment 1) are summarized as follows:

- At a minimum, half of the ECM funds received must be used in the following manner:
 - The retirement of hard and soft coverage is prioritized for SEZs and other environmentally sensitive lands (Bailey Land Capability Classes 1a, 1b SEZ, 1c, 2, and 3).
 - The retirement of potential coverage shall occur on environmentally sensitive lands (Bailey Land Capability Classes 1a, 1b SEZ, and 1c.)
 - Potential coverage on higher capability land (Class 2, 3, 4, 5, 6, & 7) is no longer in the class of land coverage eligible for retirement.
 - The requirement that the Land Bank retire one square foot of coverage for each one square foot of mitigation credited at TRPA's \$8.50 per square foot (sq. ft.) ECM fee rate is eliminated.
- At a maximum, half of the ECM funds received may be used on Environmental Improvement Program (EIP) projects or other projects deemed appropriate in advance by the TRPA Executive Director. Projects funded by the Conservancy with ECM fees under this provision:
 - Must benefit TRPA water quality and/or soil conservation thresholds;
 - Cannot replace Total Maximum Daily Load obligations or other required mitigation obligations.
- The ECM fee will be indexed using an Annual Percentage Growth Rate (APGR) calculation (or best available alternate methodology) based on residential sales information for the Lake Tahoe Region. The APGR shall be updated regularly and at least every four years to help address the actual cost of acquisition and restoration of coverage on sensitive lands.

Project Evaluation

Staff is recommending Board approval of the MOU amendments for the following reasons:

1.) The TRPA previously required that ECM fees be used to acquire and restore coverage at the same rate (currently \$8.50/sq. ft.) as they were charging permittees to pay for ECM. This created challenges to achieve the greatest environmental benefit,

since the TRPA now estimates that the price of coverage can vary between \$11/sq. ft. – \$87/sq. ft. and the cost of restoration has also increased over time. The TRPA has eliminated the requirement for the Land Bank to acquire and restore coverage at a fixed cost (i.e., \$8.50/sq. ft.), which should result in more flexibility in identifying the appropriate land for coverage acquisition and retirement.

To capture increasing costs over time, with these updates the TRPA now sets the ECM fee for a project applicant using an APGR calculation based on the best available residential sales information for the Lake Tahoe Region. The APGR is calculated regularly, at least every 4 years. The ECM fee is updated annually utilizing the most recently calculated APGR. Fee adjustments are limited to increases, even in instances when the APGR calculation may result in negative percentage growth, to preserve the intent of the ECM program. As a form of ‘peer review,’ the recommended index approach for automatically updating the ECM fee annually was reviewed and endorsed by a credentialed third-party to ensure it is appropriate and defensible for use within the region.

2.) The updates recognize that focusing on the acquisition and retirement of existing and potential coverage from SEZ and low capability environmentally sensitive land results in the greatest environmental gain and so removes higher capability land from the class of land coverage eligible for retirement. This change will give the Conservancy greater flexibility to realize more environmental gain.

3.) The updates now allow the Conservancy to use a portion of the ECM fees for the implementation of EIP projects, which will also result in soil conservation and/or water quality threshold gains.

Another TRPA Code change resulted from the Coverage Working Group recommendations that impacts the Conservancy’s Land Bank operations but is not included in the MOU. The change addresses a previous prohibition of transferring coverage between hydrologic areas. The prohibition made it challenging to accelerate transfer of existing coverage out of environmentally sensitive land to less sensitive land, since in some hydrologic areas the amount of land available for acquisition is limited and the costs to acquire land is exorbitant. The Code update allows existing coverage transfers across hydrologic areas (more than 300 feet from the lake), only if coverage is transferred from sensitive lands into non-sensitive lands. This change should result in more environmental benefits and support for the town center concept of the TRPA Regional Plan.

In summary, the ECM program updates support the implementation of projects with the greatest environmental benefit to soil conservation and water quality thresholds and address challenges associated with coverage acquisition and restoration costs. Allowing a portion of the ECM funding for EIP projects is expected to improve environmental conditions overall by encouraging additional types of soil and water quality improvement projects.

The Conservancy's past restoration and/or retirement of 1,270,276 square feet of land coverage from 5,915 excess coverage mitigation projects will not be adjusted or impacted by the MOU updates. These Land Bank accomplishments have already been documented and reported to TRPA.

Staff intends to update the Board on the status of all past and proposed Land Bank activity at the June 2016 meeting.

Authority

The Conservancy is authorized under Government Code section 66907 to select and acquire real property or interests therein for the purposes of protecting the natural environment. The Conservancy is authorized under Government Code sections 66907.2, 66907.8, 66907.9, 66907.10, 66907.11 to manage, restore and convey land for the purpose of protecting the natural environment.

Consistency with California Environmental Quality Act (CEQA)

The modification of the MOU with TRPA will not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and is thus not a "project" within the meaning of the California Environmental Quality Act (CEQA). All individual Land Bank transactions, however, receive environmental review. Staff evaluates each project prior to implementation to determine the appropriate level of CEQA review. Where staff determines a project is statutorily or categorically exempt from CEQA, staff will file a Notice of Exemption with the State Clearinghouse. Where staff determines a project requires a negative declaration or an environmental impact report, the project will be brought to the Board for consideration and adoption of the appropriate environmental document and authorization to expend funds to implement the project.

List of Attachments:

Attachment 1 – Memorandum of Understanding between the Tahoe Regional Planning
Agency and the California Tahoe Conservancy

Attachment 2 – Resolution 16-03-05

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

This Memorandum of Understanding is entered into this ~~18th~~ ___ day of ~~February, 1988~~_____, 2015, 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, ~~and~~ effective July 1, 1987, and updated December 12, 2012 (hereafter "~~the~~ Regional Plan");
- the TRPA Code of Ordinances, ~~and~~ 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~~statute~~ of the California Tahoe Conservancy (~~California Government Code Section 66905 et seq.~~ 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. XX-XX-XX, adopted December XX, 2015;

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- 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 [902 of the TRPA Code of Ordinances](#), the definitions contained herein shall govern this Memorandum of Understanding to the extent of any inconsistency.

A. Land ~~Coverage~~ Bank.

The term "land ~~coverage~~ bank" shall mean a land bank as provided for in the Goals and Policies of the Regional Plan, and Chapters [3029](#) and [638](#) of the TRPA Code of Ordinances, to be established by the CONSERVANCY for that portion of the Lake Tahoe ~~Basin~~-[Region](#) lying within the State of California.

~~B. Interim Period.~~

~~The term "interim period" shall mean the period extending from the effective date of the Regional Plan until TRPA's first revision of the coverage reduction formula pursuant to Section V(A)(6) below.~~

~~C.~~[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 ~~coverage~~ bank.

~~D.~~[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

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of base land coverage and which fee is calculated according to a formula set forth in Chapter ~~2~~30 of the TRPA Code of Ordinances.

~~E~~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.

~~D~~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 ~~Basin-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 ~~coverage~~ bank to be operated by the CONSERVANCY for the California side of the Lake Tahoe ~~Basin-Region~~ and to set forth the procedures to be followed by TRPA and the CONSERVANCY with respect to the land ~~coverage~~ 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, ~~has been~~ 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 ~~Basin-Region~~, by carrying out an excess coverage mitigation project on any parcel or parcels eligible to provide such mitigation under Chapter ~~2~~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 ~~2~~30; and

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(3) ~~upon the effectiveness of a transfer of coverage program pursuant to Chapter 20,~~ selling and transferring coverage from any parcel in the inventory of the land ~~coverage~~ bank which is eligible to send coverage to any parcel eligible to receive such coverage under ~~said~~ 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 ~~coverage~~ bank, all excess coverage mitigation fees paid to TRPA for projects located in California, ~~from the effective date of the Regional Plan~~ 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 ~~monthly~~ report bi-annually ~~or printout~~ containing the following information pertaining to each permit for which an excess coverage mitigation fee was received by TRPA during the preceding reporting period ~~month~~:

~~(a) name of permit applicant;~~

(a) ~~(b)~~ location of project by state, county, hydrologically related area, and assessor parcel number(s);

(b) ~~(c)~~ amount of fee paid by applicant;

~~(d) type of project (residential, commercial, tourist accommodation, etc.) and type of coverage needed as mitigation;~~

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~~(c)(e)~~ amount ~~of mitigation and type of coverage~~ in terms of square feet as determined under the coverage reduction formula in Chapter ~~23~~0.

(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 ~~by check~~ payable to the "California Tahoe Conservancy," and shall bear the notation "land ~~coverage~~ bank". ~~Each disbursement check shall be accompanied by a summary statement or print out which lists the individual fees contained in the disbursement, including the information established in Section V.A.3. above. The statement shall also indicate the amount of the total disbursement which constitutes interest earned on the excess coverage mitigation fees.~~

~~-5. Projection of Mitigation Needs.~~

~~TRPA shall periodically provide the CONSERVANCY with all available information concerning past and projected permit applications which would assist the CONSERVANCY in determining the projected needs for restoration or retirement of~~

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~~hard, soft, and potential coverage and disturbed land through the land coverage bank in each hydrologically related area, for at least 12 months ahead.~~

~~-6.~~ Annual Revision of Standard TRPA Coverage Cost.

~~TRPA shall annually review and, when appropriate, shall revise the standard TRPA coverage cost (Subsection 20.5.A (3)(b) of TRPA Code) provided for in Chapter 20, to reflect the actual cost of retiring and restoring coverage as documented in the periodic and annual reports and accounts prepared by the CONSERVANCY for the land coverage bank. The first annual revision of the standard TRPA coverage cost shall occur on or after November 30, 1988.~~

~~-7.~~ 5. Transfers of Coverage.

Where the CONSERVANCY agrees to transfer coverage on behalf of a permit applicant through the land ~~coverage~~ bank, pursuant to Chapter ~~23~~0, 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.

~~(b) accept payment for said coverage or mitigation from the permit applicant in the amount agreed upon between the CONSERVANCY and the permit applicant; and~~

~~(c) hold said payment in an interest-bearing account until such time as the~~

~~CONSERVANCY requests disbursement of the funds for the land coverage bank.~~

~~-8.~~ 6. Public Service Projects and Public Outdoor Recreation Projects.

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Where the CONSERVANCY agrees to carry out mitigation for a public service project or public outdoor recreation project on sensitive land, pursuant to Chapter ~~23~~30, the procedures set forth for "transfers of coverage" in Section V.A.~~7~~5. above shall apply.

B. CONSERVANCY Duties

1. Establishment of Land ~~Coverage~~ Bank; Site Selection.

~~Starting from the effective date of this Memorandum, t~~The CONSERVANCY shall take all necessary and appropriate action to ~~activate~~ maintain and manage the land ~~coverage~~ bank and shall proceed with a systematic identification of lands ~~in each hydrologically related area -which~~ that would be appropriate for inclusion in the land ~~coverage~~ bank.

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

- (a) The CONSERVANCY shall use best efforts to acquire and maintain within the land ~~coverage~~ bank an inventory of hard, soft, and potential coverage and disturbed lands, sufficient to meet the projected needs of the land ~~coverage~~ bank.
- (b) In order to maintain an inventory of coverage for the land ~~coverage~~ bank, the CONSERVANCY may utilize assets other than excess coverage mitigation fees for the purpose of acquiring and/or restoring land for the land ~~coverage~~ 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 ~~23~~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:

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(1) for no less than 50% of the fees received, paying for assets advanced to the land ~~coverage~~ bank by the CONSERVANCY, ~~;(2)~~ acquiring land for the use of the land ~~coverage~~ bank, ~~;(3)~~ and restoring hard and soft coverage and disturbed lands and retiring potential coverage through the land ~~coverage~~ bank; ~~and.~~ 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.

~~(4)~~(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 ~~coverage~~ bank, by the CONSERVANCY or which are billed to the CONSERVANCY 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, and earthmoving and demolition~~ all steps necessary to successfully restore land to meet various laws, regulations,

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[permit requirements, and TRPA Code of Ordinances](#). Overhead and other incidental costs of administration, operation, and monitoring of the land ~~coverage~~-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.

~~(e). For each project generating an excess coverage mitigation fee which is assignable to the CONSERVANCY, the CONSERVANCY shall retire and/or restore, as excess coverage mitigation, the amount of coverage calculated under the coverage reduction formula contained in Chapter 20; provided, however, that during the interim period the amount of coverage to be retired or restored shall be limited to the amount paid for by the excess coverage mitigation fee paid for that project.~~

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 ~~23~~30. In such cases the price paid for the coverage shall be agreed upon by the permit applicant and the CONSERVANCY. ~~At the CONSERVANCY's election, t~~The purchase price shall be paid either directly to the CONSERVANCY or to TRPA, as provided in Section V.A.75. above. 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](#) ~~by the CONSERVANCY or TRPA, as the case may be, such party shall notify the other party of the receipt of funds and the amount received.~~

The CONSERVANCY shall then transmit to TRPA the "land coverage information for

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account files" required for "sending" parcels under Chapter ~~38~~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 ~~23~~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 ~~coverage~~ 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.

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- (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 ~~coverage~~ bank shall be subject to TRPA and/or MOU permitting partners inspection and review.

~~7.~~ Periodic Reports.

~~The CONSERVANCY shall report to TRPA periodically, but not more often than monthly, on the status of all coverage and disturbed land which has been retired or restored during the reporting period.~~

~~8.~~ 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 ~~coverage~~ 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.

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~~9.8.~~ CONSERVANCY Accounts.

The CONSERVANCY shall maintain ~~remaining~~ 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 ~~coverage~~ bank;
- (b) all properties within the inventory of the land ~~coverage~~ 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.

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.

- (d) all EIP and non-EIP projects for which the CONSERVANCY contributed excess coverage mitigation fees.

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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.

(Party to sign)
TAHOE REGIONAL PLANNING AGENCY
Executive Director

(Party to sign)
CALIFORNIA TAHOE CONSERVANCY
Executive Director

ATTACHMENT 2

California Tahoe Conservancy

Resolution

16-03-05

Adopted: March 17, 2016

LAND BANK EXCESS COVERAGE MITIGATION MEMORANDUM OF UNDERSTANDING

Staff recommends that the Conservancy adopt the following resolution pursuant to Government Code sections 66907.2, 66907.8, 66907.9, 66907.10, and 66907.11:

"The California Tahoe Conservancy hereby authorizes staff to take all actions necessary to update the Tahoe Regional Planning Agency and California Tahoe Conservancy Memorandum of Understanding, as more fully set forth in the accompanying staff report."

I hereby certify that the foregoing is a true and correct copy of the resolution duly and regularly adopted by the California Tahoe Conservancy at a meeting thereof held on the 17th day of March 2016.

In WITNESS THEREOF, I have hereunto set my hand this 17th day of March 2016.

Patrick Wright
Executive Director