



Mail
PO Box 5310
Stateline, NV 89449-5310

Location
128 Market Street
Stateline, NV 89449

Contact
Phone: 775-588-4547
Fax: 775-588-4527
www.trpa.org

MEMORANDUM

Date: October 2, 2014
To: Coverage Working Group
From: TRPA Staff
Subject: Excess Coverage Mitigation – Alternatives

Requested Action:

Develop a recommended alternative regarding the Excess Coverage Mitigation Program for TRPA Advisory Planning Commission (APC), Regional Plan Implementation Committee (RPIC), and Governing Board review and consideration.

Overview:

At their annual priority setting workshop in 2014, the Governing Board directed staff to address Excess Coverage Mitigation (ECM) 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, which met three times from March through August 2014 to develop recommendations on coverage transfers across Hydrologically Related Areas, and to develop a set of potential revisions for the excess coverage mitigation program.

At the October 2, 2014 Coverage Working Group meeting, TRPA staff requests that the Working Group review, refine, and come to an agreement on the recommended alternative(s). Once the Working Group develops recommendations, these will be advanced to the Advisory Planning Commission (APC) for review and consideration prior to consideration by the RPIC and the full TRPA Governing Board. The following section offers a background on the ECM Program to help frame the alternatives.

Background:

Excess land coverage is the amount of legally created land coverage existing within a project area that exceeds the base allowable land coverage described in Section 30.4.1 of the TRPA Code. TRPA regulations require project applicants to mitigate the excess land coverage through any of the following excess land coverage mitigation program options (or combinations thereof) including reducing coverage on-site or offsite as a part of project approval (restored pursuant to subsection 30.5.3); payment of an Excess Coverage Mitigation Fee (ECM fee) in lieu of coverage reduction; consolidation or adjustment of parcel lot lines; or mitigation of excess land coverage in a Community Plan or Area Plan. The California Tahoe Conservancy (CTC) and the Nevada Division of State Lands (NDSL) receive ECM fee disbursements from TRPA to retire potential coverage or restore existing coverage. Memoranda of Understanding (MOUs) between TRPA and the land banks provide additional detail on the use of the ECM fee.¹ The average ECM fees collected for the Region, based on available data for 2002 – 2011, are \$693,738 per year.

¹ See Staff Summary for August 20, 2014 for more detail on coverage, the ECM Program, and the existing MOUs: http://www.trpa.org/wp-content/uploads/Coverage_Working_Group-3_Staff-Summary.pdf

Alternatives Evaluation:

At the August 20th meeting, the Coverage Work Group was asked to identify the characteristics of an ideal ECM Program and to brainstorm possible alternatives for further examination. The outcomes from these discussions are summarized below under the headings “Characteristics of an ideal ECM Program” and “Alternatives for the ECM Program”.²

TRPA staff conducted an initial evaluation of each alternative and outlined pros and cons. The alternatives identified by the Working Group were also evaluated against the working group-identified “Characteristics of an ideal ECM Program”, and two additional criteria, “Feasibility of Implementation” and “Reduces Controversy”. The summary of each alternative includes the evaluation of each alternative, and an additional table comparing the alternatives to the characteristics of an ideal ECM program. It is included in Attachment A. TRPA staff have provided preliminary recommendations on whether the Working Group should pursue each alternative. Some alternative address how the ECM fee could be generated while others address how it could be spent. There is some opportunity to combine alternatives that address these different aspects of the program.

For all of the alternatives except alternative 2, the code requirements for the Excess Coverage Mitigation Fee could be adjusted to allow for a more sustainable and consistent fee structure, which would address characteristics 5, 7, and 8, below. The existing requirement to update the fee based on an annual appraiser’s estimate could be replaced with a one-time appraisal to set a consistent fee Region-wide. This fee could include a mechanism to automatically adjust the fee as needed. This change would address several of the characteristics identified by the working group, would ensure that fee adjustments occur automatically, and would remove the cost and administrative burden associated with re-evaluating the fee annually. Since this change to setting the mitigation fee could occur with any alternative, it is not described under each alternative below. TRPA staff recommends that the Working Group support the approach to setting the fee as described above in the recommended alternative.

Characteristics of an ideal ECM Program:

1. Mitigation should reflect the water quality impacts of the excess coverage.
2. Promote direct coverage removal rather than just paying a fee.
3. Do not create unobtainable obligations for the land banks.
4. Focus on removing land coverage in capability districts that are over-covered, especially in the Stream Environment Zone (SEZ) Areas.
5. The same fee amount should be established for the entire Lake Tahoe Region (a balanced, uniform fee).
6. Incentivize redevelopment and ensure that the ECM Program does not de-incentivize environmentally beneficial redevelopment.
7. Establish a sustainable fee structure.
8. Simplify the system.
9. Feasibility of Implementation
10. Reduces Controversy

Alternatives for the ECM Program:

1. **Establish mitigation fee/ coverage retirement ratios reflecting environmental impact.** For projects that pay the ECM fee, develop ratios that incentivize mitigation of more impactful coverage. This would

² See the meeting notes for the Coverage Working Group Meeting #3 Materials (August 20, 2014) for more detail on the discussion: <http://www.trpa.org/coverage-transfers-across-hras-working-group-meeting-materials/>

require additional tracking and reporting on fees by land capability and coverage type. Three variations of this approach are possible (A – C):

- A. Establish a uniform ECM fee though the Land Bank coverage retirement obligations would be based on a ratio with less coverage retirement required if the retired coverage is existing and/or sensitive land coverage, and more coverage retirement required if it is potential and/or non-sensitive land coverage.

Implementation Features:

This option addresses how the fee could be spent.
Amend the MOUs and establish a uniform ECM fee.

Characteristics Addressed (more detail provided in the following evaluation table):

2) Promotes direct coverage removal, 3) avoids the creation of unobtainable land bank obligations, 4) focuses on removing coverage from over-covered areas, and 5 & 7) promotes uniform fee with a sustainable structure.

Pros:

- Potential for a greater volume of coverage removal in environmentally sensitive areas.
- Provides greater flexibility for Land Banks to meet coverage obligations.

Cons:

- Difficulty with determining a ratio for coverage retirement that accurately reflects variations of impact.
- Increased complexity and administrative costs for tracking and reporting coverage retirement consistent with ratios.

Preliminary Recommendation:

Consider advancing this alternative.

- B. Projects would pay a greater fee for ECM on sensitive land and less for ECM on non-sensitive lands though the land bank obligations would remain unchanged.

Implementation Features:

This option addresses how the fee could be generated.
Adjust the ECM fee by adding variations determined by the environmental impact.

Characteristics Addressed (more detail provided in the following evaluation table):

1) Mitigation reflects the water quality impacts of the excess coverage and 7) promotes uniform fee with a sustainable structure.

Pros:

- Fees reflect coverage impacts, with more mitigation fees where greater mitigation is required.

Cons:

- Difficulty with determining a fee that accurately reflects environmental impacts.
- Would add more complexity to the formula for determining the ECM fee and increase uncertainty for project applicants.
- Could discourage redevelopment of properties in environmentally sensitive land, where redevelopment and associated water quality improvements could be most beneficial.

- Would not address opportunities to enhance the environmental benefits for the use of ECM fees by targeting it toward existing and sensitive land coverage.

Preliminary Recommendation:

Do not advance this alternative.

- C. A combination of options A and B with a fee ratio for applicants and a coverage retirement ratio for land banks.

Implementation Features:

This option addresses how the fee could be generated and spent.

Amend the MOUs and adjust the ECM fee by adding variations determined by the environmental impact.

Characteristics Addressed (more detail provided in the following evaluation table):

1) Mitigation reflects the water quality impacts of the excess coverage, 2) promotes direct coverage removal, 3) avoids the creation of unobtainable land bank obligations, 4) focuses on removing coverage from over-covered areas, and 7) establishes a sustainable fee structure.

Pros:

- Potential for a greater volume of coverage removal in environmentally sensitive areas.
- Provides greater flexibility for Land Banks to meet coverage obligations.
- Fees reflect coverage impacts, with more mitigation fees where greater mitigation is required.

Cons:

- Difficulty with determining fee and retirement ratios that accurately reflects variations of impact.
- Increased complexity and administrative costs for tracking and reporting coverage retirement consistent with ratios.
- Would add more complexity to the formula for determining the ECM fee and increase uncertainty for project applicants.
- Could discourage redevelopment of properties in environmentally sensitive land, where redevelopment and associated water quality improvements could be most beneficial.

Preliminary Recommendation:

Do not advance this alternative.

2. **Create an annual mitigation fee for all properties with excess coverage rather than charging a fee at the time of redevelopment.** This could be similar to a stormwater utility district fee where property owners would pay a fee based on impact. This approach would involve using the Regional Bailey Land Capability map and LIDAR data to estimate which properties are over-covered, with the opportunity for property owners to challenge the determination. TRPA would assess an annual mitigation fee for all property owners with EC and the fee could be low if it is applied to all properties with EC. This alternative would also involve revising criteria governing the use of ECM fees, such as in combination with alternatives 3 or 4 below.

Implementation Features:

This option addresses how the fee could be generated.

Develop a new ECM fee, estimate which properties have excess coverage region-wide, assess fee and enforce compliance, revise requirements for use of fee.

Characteristics Addressed (more detail provided in the following evaluation table):

1) Mitigation reflects the water quality impacts of the excess coverage, 2) promotes direct coverage removal, and 6) incentivizes redevelopment.

Pros:

- The extra cost could promote the redevelopment of over-covered parcels and bring them into compliance with environmental standards.
- When applied region-wide, the fee could result in greater or more reliable mitigation fees, which could fund increased coverage restoration.

Cons:

- A new region-wide fee would be very controversial, may not get approved, and could generate legal challenges if approved.
- This fee could place a financial burden on older commercial and residential properties.
- The fee could not address parcels that have already mitigated excess coverage (EC) or legally transferred coverage. As a result, the fee would be charged to properties that have already mitigated their EC and it would not be charged to properties that are under the maximum transferred coverage limits but who have not legally transferred in coverage.
- Determining the maximum allowable coverage limits necessary to determine if a parcel is over-covered requires field verification of both land capability and legally existing coverage. In addition, coverage limits vary by type of use (e.g. commercial, public service, etc.). Field verification of every parcel would be impractical and parcel level fees would need to be assessed using coarse, regional-scale information that would have significant inaccuracies.
- This fee would require updates since development is dynamic, which would involve ongoing, complex and costly analysis.
- Challenges to the EC determination could generate significant workload, which would need to be funded out of the fees collected, reducing the funds available for coverage restoration.

Preliminary Recommendation:

Do not advance this alternative.

- 3. Use ECM Funds for existing coverage removal only.** This alternative includes revising the land bank MOUs to limit the use of ECM funds to the restoration of existing coverage rather than requiring the retirement of a specific amount of potential or existing coverage. Variations of this approach could include restricting the use of ECM funds to the restoration of existing coverage in SEZ, or to the restoration of existing coverage in SEZs and other sensitive lands. The land banks could implement the existing coverage removal through a reverse auction, which would involve advertising a request for bidders to propose a particular developed parcel for acquisition and restoration. The land banks could run and participate in the reverse auction and have access to ECM funds to perform the restoration, but could have another entity acquire and then transfer the land to the land banks so higher than market prices could be paid.

Implementation Features:

This option addresses how the fee could be spent.

Establish a uniform ECM fee and amend the land bank MOUs regarding the usage of the ECM fees.

Characteristics Addressed (more detail provided in the following evaluation table):

2) Promotes direct coverage removal, 3) avoids the creation of unobtainable land bank obligations, 4) focuses on removing coverage from over-covered areas, 5 & 7) promotes uniform fee with a sustainable structure, 8) simplifies the system, and 9) feasibility of implementation.

Pros:

- Would accelerate the removal of coverage on environmentally sensitive lands,
- Focus of ECM fees would be for on-the ground restoration rather than on retiring potential coverage.

Cons:

- None identified

Preliminary Recommendation:

Consider advancing this alternative.

- 4. Use ECM funds for restoration projects and/or water quality improvement projects.** This alternative would expand the eligible uses of ECM fees to include SEZ restoration and/or water quality improvement projects as well as coverage removal. This alternative could be implemented through a competitive grant program that allows for participation of private and public parties, or it could be directly implemented by the land banks. Variations of this approach could be narrowly focused on the restoration of SEZs or more broadly focused with providing funds for water quality projects. Specific criteria would need to be developed to ensure accountability in the use of the funds and restrict the funds from being used on projects that are already required (such as TMDL compliance or other mitigation programs).

Implementation Features:

This option addresses how the fee could be spent.

Establish a uniform ECM fee, revise land bank MOUs or develop grant program.

Characteristics Addressed (more detail provided in the following evaluation table):

2) Promotes direct coverage removal, 3) avoids the creation of unobtainable land bank obligations, 4) focuses on removing coverage from over-covered areas, 5 & 7) promotes uniform fee with a sustainable structure, 8) simplifies the system, and 9) feasibility of implementation.

Pros:

- Focus of ECM fees would be for on-the ground restoration rather than on retiring potential coverage.
- Could prioritize for restoration and water quality programs funding for projects based on environmental benefits.
- If a competitive grant program is used, it could increase competition for funds and make them available to a wider range of implementers, which could decrease cost and expand the purview of possible environmental improvements.

Cons:

- If a competitive grant program is used, it could lessen the predictability of funds available to the land banks, which could impact program efficiency.

Preliminary Recommendation:

Consider advancing this alternative.

Future Meeting: Discuss with Coverage Working Group whether another meeting is needed.

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. Table: Evaluation of Alternatives against Characteristics of an Ideal ECM Program (following)
- B. Stream Environment Zone (SEZ) map set providing the estimated quantity of coverage, except for roads in 1b (SEZ) lands in different counties located throughout the Tahoe Region (based on 2010 impervious surface GIS data).

Attachment A: Evaluation of Alternatives against Characteristics of an Ideal ECM Program

		<i>Alternative 1A</i>	<i>Alternative 1B</i>	<i>Alternative 1C</i>	<i>Alternative 2</i>	<i>Alternative 3</i>	<i>Alternative 4</i>
		<i>Establish mitigation fee ratios reflecting environmental impact</i>					
<i>Evaluation Criteria:</i>	<i>Notes on Criteria</i>	A. Have one ECM fee, but Land Bank obligations would be based on a ratio with less coverage retirement required if it is existing and/ or sensitive land coverage	B. Projects would pay a greater fee for ECM on sensitive land and less for ECM on non-sensitive land, though land bank obligations would remain unchanged	C. Combination of A and B: fee ratio for applicants and a retirement ratio for land banks	Create an annual Excess Coverage (EC) fee for all properties with EC rather than charging a fee at the time of redevelopment	Use ECM Funds for existing coverage removal only	Use ECM fees for restoration projects and/or water quality improvement projects
Mitigation reflects the water quality impacts of the excess coverage	I.e. the mitigation fee is greater where the impact is greater	0	1	1	1	0	0
Promotes direct coverage removal	Removal of existing coverage not potential	1	0	1	1	1	1
Avoids the creation of unobtainable obligations for the land banks	Restoration/retirement obligations are realistic	1	0	1	0	1	1
Focuses on removing coverage from over-covered areas - SEZs in particular	Prioritized SEZ or sensitive land	1	0	1	0	1	1
Promotes a uniform region-wide fee	One consistent fee across states & HRAs can be a component of multiple alternatives	1	-1	-1	0	1	1
Incentivizes redevelopment		0	0	0	1	0	0
Establishes a sustainable fee structure	A uniform fee that includes mechanisms to update as needed without regular re-evaluation	1	1	1	0	1	1
Simplifies the system	Less complex for project applicants, TRPA, and Land banks	0	-1	-1	-1	1	1
Feasibility of Implementation	Practical with existing information	0	0	0	-1	1	1
Reduces Controversy		0	-1	-1	-1	0	0
Total Score		5	-1	2	0	7	7

*Scores can be -1, 0, or 1: A score of "-1" means the option detracts from the achievement of the criteria, "0" means the option is neutral, and "1" means the option promotes the attainment of the criteria.