MEMORANDUM OF UNDERSTANDING BETWEEN
THE TAHOE REGIONAL PLANNING AGENCY AND
THE NEVADA DIVISION OF STATE LANDS

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the TAHOE REGIONAL PLANNING AGENCY (TRPA), a bi-state agency created under the Tahoe Regional Planning Compact, and the Department of Conservation and Natural Resources, Nevada Division of State Lands (NDSL), an agency of the State of Nevada. This MOU is effective upon the date of the last signature of the last party to sign this agreement.

I. AUTHORITY.

This Memorandum of Understanding is based on the following laws, regulations, procedures and policies:

- the Tahoe Regional Plan as adopted by TRPA in Ordinance No. 87-9 on June 25, 1987, and effective July 1, 1987 (hereinafter "the Regional Plan");
- the TRPA Code of Ordinances and Plan Area Statements and Maps adopted pursuant thereto (all Chapter references hereinbelow are to the Code of Ordinances);
- NRS 277;
- SB 139 of the 1993 Session of the Nevada State Legislature;

WITNESSETH

WHEREAS, the parties entered into an MOU in August of 1993;

WHEREAS, the parties desire to supercede the previous MOU, with this new MOU;
NOW, THEREFORE, it is agreed as follows:

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 2 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 20, 34 and 38 of the TRPA Code of Ordinances, to be established by NDSL for that portion of the Lake Tahoe Basin lying within the State of Nevada.

B. Interim Period.

The term "interim period" shall mean the period extending from the effective date of the Regional Plan until TRPA's establishment of a Permanent Program, pursuant to Subsection 20.5 A. (3) (b), of the TRPA Code of Ordinances, in which the standard TRPA coverage cost is annually updated to reflect the actual Land Bank cost for retiring and/or restoring land coverage on the Nevada side of the Lake Tahoe Basin.

C. Excess Coverage Mitigation Project. The term "excess coverage mitigation project" shall mean any action or activity undertaken by NDSL for the purpose of generating excess land coverage mitigation credit through the land.

D. Excess Coverage Mitigation Fee.

The term "excess coverage mitigation fee" shall mean the fee which is required to be paid in order to mitigate projects with existing land coverage in excess of base land coverage and which fee is calculated according to a formula set forth in Chapter 20 of the TRPA Code of Ordinances.
E. 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.

F. Hydrologically Related Area(s).

The term "hydrologically related area" shall refer to any of the areas designated on those certain maps adopted by the TRPA on September 26, 1986, as they may be amended from time to time, which are located in whole or in part on the Nevada side of the Lake Tahoe Basin. The term "hydrologically related areas" shall refer to those areas collectively.

G. Other Development Rights.

The term "other development rights" which may be acquired, held, and transferred in the land bank, shall include, but not be limited to, residential development rights, and units of existing development, such as residential units, commercial floor area and tourist accommodation units.

III. PURPOSE.

The purpose of this Memorandum is to establish the respective duties and authorities of NDSL and the TRPA with respect to a land bank to be operated by NDSL for the Nevada side of the Lake Tahoe Basin and to set forth the procedures to be followed by TRPA and NDSL with respect to the land bank.

IV. JURISDICTION AND POWERS.

Subject to all applicable laws of the State of Nevada, the Tahoe Regional Planning Compact, and the TRPA Regional Plan and Code of Ordinances, NDSL has been designated as a land bank for the purpose of; (1) providing mitigation for excess coverage on behalf of any permit applicant on the Nevada side of the Lake Tahoe Basin, by carrying out an excess coverage mitigation project on any parcel or parcels eligible to provide such mitigation under Chapter 20 of the TRPA Code of Ordinances; (2) providing mitigation for any public health and safety project or public outdoor recreation project located on sensitive lands by retiring and restoring hard and soft coverage or
disturbed land as provided in Chapter 20 of the TRPA Code of Ordinances; and (3) upon the effectiveness of a transfer of coverage program pursuant to Chapter 20 of the TRPA Code of Ordinances, NDSL shall be engaged in purchasing, selling and transferring coverage or other development rights from any parcel in the inventory of the land bank which is eligible to send coverage or other development rights, to any parcel eligible to receive such coverage or other development rights, under Chapters 20 and 34 of the TRPA Code of Ordinances.

V. DUTIES.

A. TRPA Duties.

1. Assignment of Excess Coverage Mitigation Fees.

The TRPA hereby agrees to assign to NDSL for the land bank, all excess coverage mitigation fees paid to the TRPA for projects located in Nevada, from the effective date of the TRPA Regional Plan through the term of this Memorandum.

2. Deposit of Excess Coverage Mitigation Fees.

When the TRPA receives excess coverage mitigation fees from projects located in Nevada, 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 and the interest earned on said fees, to be disbursed to NDSL pursuant to Section V. (A) (4) below (Disbursements by TRPA).

3. TRPA Reporting.

The TRPA shall deliver to NDSL a quarterly report or printout (for the Nevada side of the Basin) containing the following information pertaining to each permit for which an excess coverage mitigation fee was received by TRPA during the preceding quarter:

(a) name of permit applicant;

(b) location of project by county, hydrologically related area, and assessor parcel number(s);
(c) date and amount of fee paid by applicant;

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

(e) amount of mitigation in terms of square feet as determined under the coverage reduction formula in Chapter 20.

4. **Disbursements by TRPA.**

TRPA shall disburse all accumulated excess coverage mitigation fees payable to NDSL under Section V. A. 1. above (**Assignment of Excess Coverage Mitigation Fees**), and any interest accrued thereon, to NDSL upon its request, which shall occur not more often than quarterly. Such disbursements shall be made by check payable to the "Nevada Division of State Lands", and shall bear the notation "land bank". Each disbursement check shall be accompanied by a summary statement or printout, which lists the individual fees contained in the disbursements, including the information established in Section V. A. 3. above (**TRPA Reporting**). 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 provide NDSL upon request with all available information concerning past and projected permit applications which would assist NDSL in determining the projected needs for restoration or retirement of hard, soft, and potential coverage and disturbed land through the land bank in each hydrologically related area, for at least 12 months ahead.

6. **Revision of Standard TRPA Coverage Cost.**

The TRPA shall have the right to review and, when appropriate, revise the standard TRPA coverage cost as provided for in Chapter 20, Section 5. A. (3) (b) of the TRPA Code of Ordinances. The revised standard coverage cost shall reflect the actual cost of retiring and restoring coverage, per Section V. B. 3. (b) below (**Use of Excess Coverage Mitigation Fees**), and as
documented in the accounts and annual report to the TRPA per Section V. B. 7. below (Annual Report to the TRPA). Notwithstanding the above, until the TRPA elects to establish a permanent program that annually updates the standard coverage cost as stated above, NDSL shall operate per Section V. B. 3. (c) below.

7. Transfers of Coverage.

Where NDSL agrees to transfer coverage on behalf of a permit applicant through the land bank, pursuant to Chapter 20 of the TRPA Code of Ordinances, TRPA shall, upon NDSL's request:

(a) certify to NDSL the amount and type of coverage or mitigation needed by the permit applicant;

(b) determine the eligibility of the sending and receiving parcels.

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

(d) hold said payment in an interest-bearing account until such time as NDSL requests disbursement of the funds for the land bank per Section V. A. 4. above (Disbursements by TRPA).


Where NDSL agrees to carry out mitigation for a public service project or public outdoor recreation project on sensitive land, pursuant to Chapter 20 of the TRPA Code of Ordinances, the procedures set forth for "transfers of coverage" in Section V. A. 7. above (Transfers of coverage) shall apply.

B. NDSL Duties.

1. Establishment of Land Bank.

Starting from the effective date of this Memorandum, NDSL shall take all necessary and appropriate action to activate the land bank.
2. **Maintaining Inventory; Advance of Assets; Use of Inventory.**

   (a) NDSL 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, NDSL 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 NDSL 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 20 of the TRPA Code of Ordinances, provided that NDSL's responsibilities under Section V. B. 3. below **(Use of Excess Coverage Mitigation Fees)** are not thereby impaired.

3. **Use of Excess Coverage Mitigation Fees.**

   (a) NDSL shall use excess coverage mitigation fees received from the TRPA solely for the purposes of (1) paying for assets advanced to the land bank by NDSL; (2) acquiring land (and other development rights attached to the land) for the use of the land bank; (3) restoring hard and soft coverage and disturbed lands and retiring potential coverage through the land bank; and (4) administrative expenses and overhead, subject to the limitations in V. B. 3. (b) below.

   (b) NDSL may apply the excess coverage mitigation fees toward payment or reimbursement of its direct costs of acquisition and/or restoration incurred for or through the land bank, which are billed to NDSL 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, earthmoving and demolition. Overhead and other incidental costs of administration, operation and monitoring of the land bank may be budgeted and charged by NDSL against the excess coverage
mitigation fees to cover actual costs to NDSL, up to twelve percent (12%) of the aggregate of such fees (including interest) received from TRPA. NDSL shall maintain documentation of its overhead and other incidental costs and submit an annual financial report to the TRPA within 90 days of the close of the fiscal year.

(c) For each project generating an excess coverage mitigation fee which is assignable to NDSL, NDSL 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. During the interim period, NDSL shall seek to retire and/or restore as much coverage in each hydrologic zone as can reasonably and prudently be purchased, based on current market conditions. Notwithstanding the above, NDSL shall have the discretion to expend the interest accrued on mitigation fees within any hydrologic zone.

4. **Transfers of Coverage and Other Development Rights.**

NDSL may enter into agreements for the sale and transfer of coverage to parcels which have not already reached maximum land coverage, pursuant to Chapter 20 of the TRPA Code of Ordinances. In such cases the price paid for the coverage shall be agreed upon by the permit applicant and NDSL. At NDSL’s election, the purchase price shall be paid either directly to NDSL or to the TRPA, as provided in Section V. A. 7. above (Transfers of Coverage). Upon receipt of funds by NDSL or TRPA, as the case may be, such party shall notify the other party of the receipt of funds and the amount received. NDSL shall then transmit to TRPA the “land coverage information for account files” required for “sending” parcels under Chapter 38 of the TRPA Code of Ordinances.

NDSL also may enter into agreements for the sale and transfer of other development rights. All transfers shall be in accordance with TRPA Code of Ordinances.
5. **Public Service Projects and Public Outdoor Recreation Projects.**

NDSL may enter into agreements to provide mitigation for public service projects and public outdoor recreation projects for the purpose of restoring disturbed lands or hard or soft coverage on sensitive lands, as provided under Chapter 20 of the TRPA Code of Ordinances. The terms and procedures set forth for in Section V. B. 4. (Transfers of Coverage and Other Development Rights) 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 the TRPA a document or documents, in a form acceptable to the TRPA and suitable for recordation, by which NDSL 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 demolition 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 Section V. B. 6. (b) above (Methods of Retiring Coverage).

(d) Within the boundaries of all areas where hard or soft coverage or disturbed land is restored or retired, NDSL shall permanently retire all coverage in the manner provided in Section V. B. 6. (a) above.

(e) All coverage retirement carried out through the land bank shall be subject to TRPA inspection and review.
7. **Annual Report to the TRPA.**

Within 90 days after the end of each fiscal year, NDSL shall prepare and deliver to the TRPA an annual report summarizing all excess coverage mitigation projects performed during said reporting period, and identify the excess coverage mitigation fees which were applied toward each such project. In addition, the annual report shall list:

(a) all properties within the inventory of the land bank;

(b) all transfers of coverage that have taken place;

(c) all mitigation already performed or in progress, but not yet credited towards a permit applicant's project;

(d) all properties on which coverage or disturbed land has been restored or retired, 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 of coverage restored or retired. In computing the cost per square foot, NDSL may use an average based on the cost of restoring or retiring a given type of coverage in more than one coverage mitigation project;
- 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.

**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 NDSL and the TRPA Governing Board. In the event this Memorandum of Understanding is terminated for any reason, NDSL shall continue to carry out the duties of Section V.
B. 3. above (Use of Excess Coverage Mitigation Fees), as well as related reporting obligations and TRPA shall continue to carry out the duties of Section V. A. 4. above (Disbursements by TRPA), as well as related reporting obligations, for all projects for which mitigation fees were received by TRPA prior to the effective date of termination. Unexpended mitigation fees received by NDSL, 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.

TAHOE REGIONAL PLANNING AGENCY

JOHN L. MARSHALL
Acting Executive Director

Approved as to form:
TRPA General Counsel

JOHN L. MARSHALL

NEVADA DIVISION OF STATE LANDS

PAMELA B. WILCOX
Administrator and Ex-Officio State Land Registrar

Approved as to form:
FRANKIE SUE DEL PAPA
Attorney General

GEORGE TAYLOR
Deputy Attorney General