

Summary of the TRPA BMP Compliance Working Group Meeting #2 (July 8, 2014)

LATE MATERIAL

A total of 9 topics were discussed:

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1. Real estate disclosure process
2. Requiring BMPs at point of sale
3. Using forfeited securities
4. Enforcement options such as recording a notice of noncompliance against a property
5. Prioritizing BMP implementation in coordination with Load Reduction Plans
6. Area-wide BMPs and in-lieu fees
7. Additional incentives/subsidies to encourage BMP installation
8. BMP maintenance and adaptive management
9. Additional topics of interest (e.g. marinas)

Although TRPA staff recommended referring a number of these topics to other Agency committees, a majority of the working group resisted that suggestion. By meeting's end it was, however, agreed to request that the TRPA Legal Committee develop a recommendation on the use of forfeited securities to effect compliance with BMP requirements. By necessity, this would also involve recommending revisions to the TRPA Code of Ordinances.

Following a robust discussion of the remaining aforementioned topics the following preliminary decisions were made:

Point of Sale – Not unexpectedly, the real estate community was well represented and made a number of convincing arguments against requiring that BMPs be installed at the point of sale (4 to 5 months of inclement weather, seasonal grading restrictions, liability related to delayed closings, aversion by escrow companies to holdbacks). It was also correctly pointed out that based on land use categories, single family residential properties contribute significantly less in terms of pollutant runoff than other sources within the Basin (e.g. roadways) and that linking the closing of a real estate transaction to the completion of BMPs may result in the installation of an inferior product. Although neither the workgroup nor the Governing Board have the authority to prohibit future consideration of point of sale as an option, there was consensus that such a requirement should not be imposed as a first course of action. In addition to the reasons enumerated above, it was apparent, even to those members of the group who were advocating for the point of sale option, that this issue is extremely divisive and might alienate the very people on whom local governments would have to rely if there is a future attempt to create improvement districts as a long term source of capital for the construction and the maintenance of water quality projects.

Real Estate Disclosure Process – Almost without exception, it was agreed, that we should focus our efforts on encouraging voluntary compliance by enhancing the real estate disclosure process. A number of changes were suggested to the Best Management Practices (BMP) Disclosure form that will be considered by a committee of real estate representatives

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and TRPA staff members who have been tasked with the job of revising the disclosure addendum and perhaps, the real estate purchase agreements that are used by Realtors doing business in the Basin. This option, however, will not capture every real estate transaction since not every real estate agent is a Realtor and not every seller/buyer uses a real estate professional. A discussion then ensued about the current efforts by members of the Board of Realtors to educate their clients about the BMP requirements through transactional forms, the Multiple Listing Service and by word of mouth.

Enforcement Options (such as recording a notice of noncompliance against a property)

Although it was noted that the TRPA already has the ability to lien property as do local governments, recording a notice of noncompliance could cloud title and interfere with the sale of loans in the secondary mortgage market. Multi-family developments also offer a challenge since BMPs by necessity must be installed in a cooperative manner by building complex and not by individual unit.

It was agreed by the workgroup that the accuracy of the Agency's tracking system needs to be improved to link Assessor Parcel Numbers with BMP enforcement files to facilitate the tracking of parcels under active enforcement.

Prioritize BMP Implementation in Coordination with Load Reduction Plans

There was general agreement that BMP implementation and TRPA enforcement efforts should focus on areas that have already been targeted for the implementation of loan reduction projects under the TMDL program. Additionally, priority will be given to properties adjacent to EIP Erosion Control Projects; properties adjacent to Lake Tahoe, tributaries and stream environment zones; properties with obvious discharges; "hotspots"; properties with existing violations or with expired but open permits and retained securities and; properties about which TRPA has received verified complaints from other jurisdictions.

Efforts to compel voluntary compliance will continue through a more robust education and outreach program.

Area-Wide BMPs and In-Lieu Fees

It was acknowledged that area-wide treatment can offer greater water quality benefits than certain parcel specific BMPs by providing a more holistic design and facilitating maintenance over time. Such projects can be public funding intensive but often yield a more effective result. In such instances private parcel owners would be asked to contribute an in-lieu fee in exchange for not having to install BMPs specific to their properties.

Additional Incentives/Subsidies

The existing incentives offered by the Agency (e.g. coverage incentives, the Lake Friendly Business Program) were deemed by some (including me) to be insufficient to adequately address the problem faced by property owners who legitimately cannot afford to retrofit

their properties with BMPs. Although we adjourned the meeting before discussing this issue at great length, there was no resistance to the idea of seeking additional grant funding to subsidize a reimbursement program. I also suggested that local governments consider the option of installing BMPs on certain commercial properties subject to an agreement by the property owner to reimburse the City or County over time through supplemental property tax collections.

BMP Maintenance and Adaptive Management

It was widely agreed that area wide projects offered a far greater opportunity for long term maintenance than BMPs installed on individual properties since maintenance cannot be easily monitored or enforced.

The next meeting of the BMP Compliance working Group is scheduled for August 20th.