

TO: Honorable Board of Supervisors

DATE: February 16, 2021

FROM: Todd Leopold, County Executive Officer
Erin Casey, Principal Management Analyst

SUBJECT: North Lake Tahoe Economic Development Incentive Program Amendment

ACTION REQUESTED

1. Receive a presentation from county staff on proposed amendments to the Transient Occupancy Tax Rebate ("TOT Rebate") component of the North Lake Tahoe Economic Development Incentives Program ("Incentives Program").
2. Approve proposed amendments to the TOT Rebate portion of the Incentives Program.
3. Authorize the County Executive Officer, or designee, to update the Incentives Program, after review and approval by County Counsel, consistent with proposed amendments to the TOT Rebate.

BACKGROUND

On May 17, 2016, your Board approved the Incentives Program to help spur investment for environmental and economic developments and/or redevelopment lodging projects in the Placer County portion of the Lake Tahoe Basin. The primary goals of the Incentives Program include:

- Help offset the extraordinarily high costs of developing lodging projects the Tahoe Basin where no new lodging projects of scale have been built since the early 1960's.
- Bank development rights, including Tourist Accommodation Units (TAUs), to spur investment.
- Offset infrastructure costs such as parking facilities.
- Incentivize environmental and economic revitalization.
- Support implementation of the Tahoe Basin Area Plan, as approved in 2018, which supports and encourages this type of redevelopment.
- Support implementation of the Tourism Master Plan, as approved in 2015, which highlights the need to redevelop lodging in the Tahoe Basin.

In March 2020, the County commissioned a study with Bay Area Economics (BAE) to determine why new and renovated lodging projects were not progressing, even with the Incentives Program in place. The BAE study determined that additional incentives were needed to help spur development consistent with community and County environmental and economic development goals and to achieve prescribed environmental standards by redeveloping the dated built environment. The BAE study was presented to your Board in April 2020 and recommended a TOT rebate be added to the existing Incentives Program. On July 27, 2020, your Board approved the addition of a TOT Rebate for new or renovated lodging projects to the Incentives Program.

As a brief overview of the TOT Rebate for new lodging projects, current guidelines and procedures are as follows:

- A Certified Feasibility Gap analysis (“Gap Analysis”) is required to determine “the need” for a TOT Rebate and project feasibility if that TOT Rebate is applied. The analysis must be completed by a third-party and is required to determine program eligibility.
- Project must be constructed in the Tahoe Basin portion of unincorporated Placer County.
- The proposed lodging project must generally meet a three-star minimum lodging product (or equivalent).
- Rebates for new lodging development are on a sliding scale, to assist with an applicant’s early investment exposure, including a 90 percent TOT rebate remitted for Years 1-4, an 80 percent TOT rebate remitted for Years 5-8, and a 70 percent TOT rebate remitted during the remaining incentive period.
- The maximum proposed duration of the TOT Rebate is up to 20 years or until the gap identified in the Gap Analysis is closed, whichever occurs sooner.

ISSUES

On November 17, 2020, the County received its first application for the newly added TOT Rebate. To process the application, and as mentioned above, a third-party review of the project application and proforma was needed to identify a potential funding gap and to determine project feasibility if a TOT Rebate was applied. As such, the County commissioned Goodwin Consulting Group (“Goodwin”) to analyze the project application. While performing this analysis, Goodwin identified issues with the TOT Rebate criteria specific to the Gap Analysis.

The Gap Analysis requires complex assumptions including the cost to build, daily room rates, occupancy rates and acceptable investment returns that are subjective, and almost impossible to implement consistently from one project analysis to another. Due to the individual and unique nature of each parcel in the Tahoe Basin, things such as land capability, development rights or lack thereof, and project location and scale, further complicate the ability to make reasonable, consistent, and fair Gap Analysis.

In addition, project applicants often do not have the detail required to complete a Gap Analysis until well into the entitlement process, and in many cases, may not know until final project approval by the Tahoe Regional Planning Agency and Placer County. These issues make both predictability and reliability almost impossible for a project applicant, therefor hindering, and potentially disincentivizing, the environmental and economic revitalization that is a primary TOT Rebate goal. As a result, Goodwin determined the Gap Analysis inadvertently added complexity, subjectivity, and unnecessary costs that would likely impact the efficacy of the TOT Rebate and should be reconsidered.

STAFF PROPOSED TOT REBATE AMENDMENTS

Multiple studies commissioned by the County, including the BAE Study, suggest development incentives should be predictable and reliable so project applicants can meet program requirements and incorporate those incentives into their project planning process. By doing so, project applicants would be encouraged to move forward with what is otherwise, and well documented, an extraordinarily costly and time-consuming entitlement processing environment. The current requirement for a Gap Analysis is inconsistent with that guidance.

To encourage the much needed environmental and economic revitalization in the Placer County portion of the Tahoe Basin, and to address issues outlined above, amending eligibility requirements for the TOT Rebate portion of the Incentives Program specific to new development is needed. To determine those changes, staff worked with Goodwin to develop

alternative criteria that would determine project eligibility while also simplifying program requirements for project applicants. To achieve this, the proposed amendments include eliminating the Gap Analysis, which is, in part, the source of challenges described.

In addition, both the need for incentives to improve lodging project “returns”, as well as their “community benefits”, are well documented in the BAE and other studies, therefore a Gap Analysis should not be required. Furthermore, market conditions have proven there is a need, as evidenced by no new lodging projects being developed in the Placer County basin for decades. However, if the Gap Analysis is no longer required, an alternative approach must be identified to justify and support a rebate to lodging developers in the Tahoe Basin. The basis of the revised criteria detailed below is an analysis by Goodwin of the BAE Study to determine the “need” for a rebate based on the project type (hotel or condotel) and the additional costs to develop either project type within the Tahoe Basin. The following includes staff recommended amendments, supported by Goodwin’s review of the BAE Study, to the existing TOT Rebate portion of the Incentives Program:

- Remove the requirement for a Gap Analysis and replace with a tiered system which defines the TOT Rebate available by project type and the rebate term (Table 1 – Proposed TOT Rebate Amendments)
- Extend the rebate to a 20-year period rather than “up to 20 years and/or when the Funding Gap is closed”.
- Continue the requirement of a minimum quality threshold, currently defined in the Incentives Program as a three-star lodging property equivalent or higher but replace “three-star” with “full-service hotel”, as defined by STR, Inc. which includes the following:
 - A **full-service hotel** is defined as *“Upscale, Upper Upscale and Luxury properties with a wide variety of onsite amenities, such as restaurants, meeting spaces, exercise rooms or spas”*.
- Require the full-service hotel standard apply for the for the duration of the project rebate period.
- Require all “condotel” projects to limit the number of days per year condo owners can occupy units to 90 calendar days with no more than 30 days being consecutive, via deed restrictions pursuant to and contingent upon project approvals. This applies to all or some percentage of condos within the development.
- Require condotel project developer/manager to provide a single point of contact via professional rental management of all project units and be a single source of TOT tracking and remittance during the entirety of the rebate program period.
- Allow transfer of the TOT Rebate to another developer, so long as project is not, or having previously been, in foreclosure and/or deed-in-lieu of foreclosure proceedings.
- Revise the Incentives Program sunset date from July 27, 2026 to June 30, 2026.

Table 1 – Proposed TOT Rebate Amendments

New Lodging Development Example (Current Program)		New Lodging Development Example (Proposed Amended Program)	
Assumptions ¹	100 rooms/keys	Assumptions ²	100 rooms/keys
	ADR Year 1 - \$200/room		ADR Year 1 – Varies by Category
	60 % Occupancy		60 % Occupancy
	10 % TOT Rate		10 % TOT Rate
	ADR Increase – 2%/Year		ADR Increase – 2%/Year
Rebate Amount and Term Max 20 yrs. or Cap ³	90%/4 Years	Rebate Amount and Term	Hotel – 80%/20 Years
	80%/4 Years		Condotel (65/35%) – 60%/20 Years
	70%/12 Years		Condotel – 40%/20 Years
Notes: 1) Assumptions are based on data from previous studies. 3) Estimated TOT Incentive for New Lodging Development Projects is Capped at Certified Project Costs Gap, or 20 years, whichever occurs first.		Notes: 2) Assumptions based on previous studies and Goodwin Consulting Group refinements to room rates to account for higher quality projects	

It should be noted that many of these suggested amendments are specific to program criteria, and eligibility is subject to your Board’s concurrence, as well as individual project Operating Covenant Agreements, as is currently required in the Incentives Program.

DEVELOPER FEEDBACK

When county staff began developing the TOT Rebate, meetings with several lodging developers were scheduled to solicit input on program concepts. Some of that feedback was incorporated into the proposed TOT Rebate which was approved by your Board in July 2020. Staff met with the same group of lodging developers to share the proposed TOT Rebate amendments and seek feedback. Per those meetings, the following themes emerged:

1. Support for simplifying the TOT Rebate for new lodging development.
2. Support for eliminating the Gap Analysis.
3. Concern from some condotel developers regarding the current deed restriction requirement.
4. Concern from some condotel developers regarding the reduction in the available TOT Rebate specifically for condotels.
5. Challenges to develop within the Tahoe Basin are not easily quantifiable but should be considered when determining the available TOT Rebate (longer to plan and build, litigious environment, seasonality, less risk in locations outside of the Tahoe Basin)

6. Requested expansion of the Incentive Program to include investment in infrastructure requirements for any new proposed development i.e., parking, sidewalks, utilities etc. (Not TOT Rebate specific)

In summary, while there was general support to simplify the program by eliminating the Gap Analysis, some condotel developers, including the current TOT Rebate applicant, remain concerned with proposed amendments. The basis of the proposed amendments is the BAE Study though there is still disagreement between some condotel developers and assumptions used to develop proposed amendments to the TOT Rebate. Your Board may consider adjusting amendments per developer feedback, however; the staff recommendation is aligned with Goodwin's analysis to ensure program goals are met without triggering potential gift of public funds issues.

ADDITIONAL CONSIDERATIONS

Implementation, Administering, Auditing

Currently, all TOT reporting is done with Placer County Revenue Services. This program would continue with this process, with Economic Development and CEO Tahoe working closely with Revenue Services to ensure projects are aware of, and implementing properly, County requirements including audit rights. It is proposed that TOT rebates would be processed using a full twelve-month cycle, and rebates administered using payments in arrears after Revenue Services has ensured proper documentation has been provided and approved.

Prevailing Wages

The Incentive Program includes language notifying applicants that participation may trigger prevailing wage requirements to the construction portion of the project and other project components that may be covered by State law.

Failure to Construct.

The Incentive Program includes a provision allowing the Board of Supervisors to cancel a participant's participation in the program if facilities are not placed into operation within eight years of the execution of the implementation agreement for new lodging projects.

Transfer of Project

Any Incentive approved by the Board of Supervisors automatically transfers to a new owner, since the Operating Covenant Agreement would be recorded and "run with the land", so long as project is not, and/or has not been, in foreclosure and/or deed-in-lieu of foreclosure proceedings.

Sunset Provision

New applications for the new or renovation lodging incentive program will not be accepted after June 30, 2026, unless the Board Supervisors renews the hotel incentive program through an amendment or acts to terminate the program earlier. The sunset provision has the effect of preventing new applications, thus previously approved implementation agreements would continue to be in force for the duration of the agreement. Because the program will be reviewed every two years to assess current economic climate and extend or amend the program as warranted, conditions could change that cause termination or extension of the program.

Updated Program Documents

If the proposed amendments are approved by your Board, the County Executive Officer, or designee, will update the Incentives Program consistent with the approved amendments, subject to review and approval by County Counsel.

ENVIRONMENTAL IMPACT

The proposed action would not have any significant effect on the environmental and is exempt from environmental review pursuant to California Environmental Quality Act Guidelines Sections 15061(b)(3) and 15378(b)(4).

FISCAL IMPACT

The Incentive Program is designed to expedite renovation of dated existing lodging stock in the Tahoe Basin, completion of entitled projects and generate interest in investment in new lodging development that will stimulate the local economy and provide an overall net positive impact on County revenues by working to increase the assessed value of properties on the County property tax roll, increased sales tax revenues, and over time also increase County revenues from Transient Occupancy Tax.

Program revenue more than offsets administrative costs, which include application review and processing, TOT revenue and rebate analysis and rebate remittance. Key points regarding TOT Rebates for New Lodging Projects:

- Incentives of this nature tend to expedite the development of entitled properties, therefore, increasing County revenue while also increasing the likelihood of higher Transient Occupancy Tax revenue in the future.
- Project developers/owners are rebated money based on revenue generated by the property. Therefore, the Transient Occupancy Tax rebate is based entirely on new, and net new revenues to the County.

ATTACHMENT

None