TRPA Issue Sheet #2 – Development Allocations and Transfers

July 27, 2012

ISSUE SUMMARY

Context/Background: The Draft Regional Plan proposes to refine TRPA's growth control framework to accelerate sensitive land restoration and promote environmental redevelopment. Important proposals include:

- Limits on the maximum number of development allocations;
- Adjustments to the allocation release system for agencies and projects;
- Development transfer and conversion provisions to incentivize environmental improvement; and
- Size limits for transferred Tourist Accommodation Units (TAUs).

RPU Committee: The RPU Committee acted on the four topics as follows:

- Considered five alternatives for the maximum number of allocations, which range from no additional allocations to a release level that approximates the rate of development authorized by the 1987 Plan;
- Advanced an allocation release system by a non-unanimous vote;
- Unanimously endorsed an expanded development transfer program; and
- Advanced size limits for transferred TAUs by a non-unanimous vote.

EIS Analysis: For all allocation release levels, the EIS identified potentially significant impacts to vehicle miles travelled and roadway levels of service. Mitigation measures would release allocations in four-year increments while implementing alternative transportation programs; and provide for allocation reductions and/or roadway improvements as necessary to maintain compliance with adopted standards. No other potentially significant impacts were identified.

Public Comments: This issue category was addressed in many comment letters. Agency and public comments focused on the appropriate amount of new development, details of the allocation release system, whether the modified transfer ratios would meaningfully incentivize restoration and redevelopment, and appropriate size limits for transferred TAUs.

Summary of Recommendation:

1. Review and endorse the Bi-State Recommendation (Exhibit B), which would:
   - Authorize 2,600 new residential allocations, 600 new residential bonus units (for use only in centers), 200,000 sf of new CFA (released only after existing supplies are used) and no new TAUs;
   - Maintain the transfer ratios in the Draft Plan, limit opportunities for alternative ratios, and review the efficacy of the ratios following plan adoption;
   - Further limit the size of transferred TAUs and add other provisions; and
   - Establish a pilot program for on-site conversion of TAUs to Residential Units.
2. Review and endorse the Draft Mitigation Measures.
3. Consider allocation release provisions that were not addressed in the Bi-State Recommendation.
4. Consider public comments related to development allocation and transfer programs.

ISSUE ANALYSIS

Context/Background:

The Draft Regional Plan maintains the fundamental growth controls of the 1987 Regional Plan and makes refinements to accelerate threshold attainment. Sensitive land restoration and environmental redevelopment are important land use strategies to attain threshold standards, including water quality thresholds. The proposed amendments would reload certain commodities, modify annual release provisions for each commodity type, expand the transfer program to provide a more meaningful incentive for environmentally beneficial development transfers, and limit the size of transferred tourist units.

Exhibit A includes maps and statistics that show the amount and location of existing development in the Region, along with unused development allocations that are currently available within each jurisdiction.

The extent of existing development in the Region's sensitive lands is summarized in the table below (See Issue Exhibit A for more detailed information).

EXISTING DEVELOPMENT ON SENSITIVE LANDS			
	Stream Environment Zone (District 1b)	Other Sensitive Lands (Districts 1a, 1c, 2 & 3)	Total Development on Sensitive Land
Residential (ERU)	**8,823 units**	8,577 units	17,400 units
Tourist (TAU)	**3,210 units**	1,007 units	4,217 units
Commercial (CFA)	**1,817,861 sf**	804,782 sf	2,622,643 sf

Since its inception, the Regional Plan has attempted to prevent development in Stream Environment Zones (SEZs) and to relocate existing SEZ development. Progress has been slower than desired and only a small percentage of existing SEZ development has been relocated. The Draft Plan expands SEZ restoration programs to accelerate restoration.

<u>Growth Management Framework</u>: Important components of the TRPA growth system are outlined in Code Chapters 50 through 53 and are summarized below:

- Maximum build out of the Region is defined through regulations that cap all land use commodities (i.e., residential units (residential development rights and allocations), commercial floor area (CFA), and tourist accommodation units (TAUs)).
- TRPA permits the phased construction of development over many years by slowly releasing non-residential commodities and residential development allocations, which are required in order to utilize a residential development right.
- The Individual Parcel Evaluation System (IPES) is used to determine development suitability on vacant single family parcels. Many parcels with development rights were initially unbuildable

under IPES. As environmental improvements are implemented, the IPES line for each jurisdiction drops and more sensitive parcels become buildable. In all jurisdictions except Placer County, the IPES line has dropped to a point of allowing development on all single family lots with a development right except in Stream Environment Zones.

- A development transfer program encourages the relocation of existing development and development rights from sensitive areas to properties that are more suitable for development.
- Multi-Residential and Tourist Accommodation Bonus Units are awarded to projects as an incentive to achieve certain desired policy results (e.g., affordable housing or environmental improvements).
- Recreational capacity is limited by the "Persons At One Time (PAOT)" system.

Additionally, strict environmental standards are in place for all development activities (Code Chapters 60-68). Environmental standards protect water quality, vegetation, wildlife, fish, air quality, scenic quality and historic resources, as well as restricting noise levels.

Overall, the growth control system limits the Region's capacity for development and the environmental standards require that direct and indirect impacts from the limited development that is allowed be avoided or mitigated. Amendments in the Draft Plan are targeted to specific issues and do not alter the larger growth management framework.

<u>Development Allocation Limits and Release Systems (Code Chapters 50, 52 and 53)</u>: None of the Regional Plan Update alternatives increase the total number of residential development rights that are available in the Region. As a result, single family "buildout" under all alternatives is defined by the number of existing residences plus remaining development rights. Currently, single family development is over 90% built-out with approximately 47,392 existing residential units plus approximately 4,091 unused residential development rights. Since 1987, public acquisitions have reduced buildout potential by approximately 8,512 units, although a small percentage of the acquired development rights may be re-usable according to comments from the California Tahoe Conservancy. All development rights that were acquired by the Nevada Division of State Lands and the U.S. Forest Service have been retired permanently.

Similarly, none of the Regional Plan alternatives modify the IPES program or create additional PAOTs. Amendments to environmental standards are limited to targeted refinements and are addressed in the issue sheets for each topic.

Residential allocations are used as the phasing mechanism for the realization of unused residential development rights. To maintain compliance with legal rulings, allocations should be distributed for the approximately 4,091 remaining development rights at some time unless those rights are purchased and retired. Phasing could extend for decades. Approximately 6,001 residential allocations were used since 1987 and 86 remain unused. Unused residential allocations have all been distributed to and are being held for use by Local Governments.

CFA is also restricted and may only be utilized in certain areas. Currently, CFA is distributed to local governments (for certain plan areas) and projects based on need and environmental improvements. Approximately 416,421 square feet of CFA was used since 1987. A total of 383,579 square feet remains unused. Of the unused CFA, 199,995 square feet has been distributed to Local Governments, 158,816 square feet has been reserved from the TRPA Pool for unbuilt Community Enhancement Projects, and 24,768 square feet remains unreserved in the TRPA Pool.

TAUs are limited to existing tourist units. New tourist units can only be created by redeveloping/relocating existing units or by making environmental improvements that are necessary in order to receive Tourist Bonus Units. Approximately 58 Tourist Bonus Units were used since 1987 and 342 remain unused. Of the unused Tourist Bonus Units, 90 units have been reserved from the TRPA Pool for unbuilt Community Enhancement Projects and 252 remain in the TRPA Pool.

Multi-Residential Bonus Units are currently awarded to qualifying affordable housing projects and other projects that make specified environmental improvements. Approximately 526 Multi-Residential Bonus Units were used since 1987 and 874 remain unused. Of the unused Multi-Residential Bonus Units, 245 units have been reserved from the TRPA Pool for unbuilt Community Enhancement Projects and 629 units remain in the TRPA Pool.

Residential and non-residential development allocations have not been “reloaded” since 1987. The following table shows the alternative levels of allocations under consideration in the Draft Plan.

ALLOCATION AND DEVELOPMENT RIGHTS ACCOUNTING							
ALLOCATIONS/ DEVELOPMENT RIGHTS	**USED FROM 1987-2011**	**REMAIN-ING FROM 1987 PLAN***	**ADDITIONAL PROPOSED IN THE REGIONAL PLAN**				
			ALT. 1	**ALT. 2**	**ALT. 3**	**ALT. 4**	**ALT. 5**
Residential Allocations	**6,001**	**86**	0	2600	2600	4000	5200
Residential Bonus Units	**526**	**874**	0	0	600	0	0
Tourist Bonus Units	**58**	**342**	0	0	0	200	400
Commercial Floor Area (Total)	**416,421**	**383,579**	0	200,000	200,000	400,000	600,000
Placer County	*128,623*	*72,609*					
Washoe County	*87,906*	*2,000*					
Douglas County	*45,300*	*36,250*					
El Dorado County	*15,250*	*36,150*					
City of South Lake Tahoe	*77,042*	*52,986*					
TRPA Special Project and CEP Pool	*62,300*	*183,584*					
*Note: 158,816 sq. ft. of Commercial Floor Area, 245 Residential Bonus Units and 90 Tourist Bonus Units have been reserved or allocated to projects (e.g., Community Enhancement Projects) that have not been permitted or are permitted but not built. These are accounted for in the “Remaining from 1987 Plan” column.							

The Draft Regional Plan outlines the following provisions for the release and distribution of allocations:

> The existing system for release of allocations, bonus units and CFA should be modified in coordination with Local Governments and in accordance with the following principles:
>
> - A maximum yearly release of residential allocations and CFA should be made to each Local Government through the performance system and staff should coordinate with Local Governments to establish an equitable system for distribution of CFA.
> - The amount of bonus units and CFA held by TRPA and Local Governments should be evaluated annually and modified if necessary by the Governing Board to maintain adequate commodities for anticipated redevelopment activities in the region.
> - All allocations and CFA that have been distributed to Local Governments should be retained by Local Governments. In the future, Local Governments should be able to retain all allocations and CFA and that are distributed to them for use that year or at a later date.
> - All past awards of bonus units should be honored until development approvals expire. In the future, all awards of bonus units should also be honored until development approvals expire.
> - All past awards of bonus units to Plan Areas should be honored regardless of whether or not development approvals within those Plan Areas have expired.
> - No additional Residential Development Rights may be created. Approximately 4,091 Residential Development Rights remain.
> - Residential Bonus Units and Tourist Bonus Units that have not been awarded should be held by TRPA and used for development transfer matches and existing Bonus Unit programs.

<u>Development Transfer Program (Code Chapter 51)</u>: TRPA's development transfer program complements the Region's strict growth controls by encouraging the relocation of existing development and development rights from sensitive areas to properties that are more suitable for development.

Development transfers under the current Regional Plan generally occur at a 1:1 ratio (meaning one unit may be constructed for every unit that is removed). In some circumstances, which generally relate to sensitive land restoration, bonus units are awarded resulting in a transfer ratio greater than 1:1. There is a complex scoring system to determine an award of bonus units for a qualifying project. Additionally, there are numerous sending and receiving area restrictions for transfers. There is no opportunity for CFA to be transferred from sensitive lands at a rate that exceeds 1:1, except for limited transfers into "preferred industrial areas". Transfer transfer ratios for preferred industrial areas do not vary based on sensitivity of the sending parcel.

The existing Regional Plan also has provisions for conversions of use (Code Sec 50.9). Under this program, existing residential and tourist units can be converted to residential, tourist or commercial uses when certain criteria are met. Requirements to convert uses include restoration of a sensitive sending parcel, removal of a non-conforming use, implementation of an Environmental Improvement Project, or provision of deed restricted affordable housing.

Development transfers and conversions under the existing Plan are infrequently utilized. Public input and extensive research indicates that the slow utilization rate is likely due to the limited incentives, strict requirements and the complexity of existing transfer provisions. Overall, the transfer program has not been financially feasible for many property owners. The slow transfer utilization rate has contributed to TRPA's restoration targets for Stream Environment Zones not being met.

The Draft Regional Plan establishes a new opportunity for development transfers to designated community centers (Town Centers, Regional Center and the High Density Tourist District). The program authorizes transfer ratios that vary based on the sensitivity and location of the sending parcel. The draft provisions provide incentives to restore sensitive lands and to relocate development from auto-dependent outlying areas to walkable Town Centers that can easily be serviced by transit. Significant differences between the current and new transfer programs include:

- The new program applies only to transfers into defined community centers with the goal of reducing automobile dependency, promoting environmental redevelopment and restoring sensitive lands. Existing transfer provisions would continue to be available for transfers outside defined community centers.
- Environmentally beneficial transfers are eligible for transfer ratios that exceed 1:1 to incentivize restoration and better reflect the environmental benefits of each transfer.
- The new program applies to all use types to incentivize the restoration of sensitive lands that are not eligible for incentives in the current program, such as existing commercial businesses in Stream Environment Zones.
- Through the Area Planning process, alternative transfer ratios can be established for unique environmental situations as long as the alternative ratios are shown to be environmentally beneficial.
- The program is much less complex and has fewer restrictions to encourage its utilization and accelerate threshold attainment.

The Draft Regional Plan does not modify conversion of use provisions in the existing Plan.

<u>Size Limits for Transferred Tourist Accommodation Units (TAUs)</u>: The existing Plan does not directly restrict the size of expanded or transferred Residential or Tourist Units. Instead, expansions are limited by development regulations such as height and coverage. In contrast, CFA is regulated by floor area. Tourist unit sizes have increased significantly for most of the projects that have utilized transfer

provisions. Some residents have raised concerns that the larger tourist units negatively impact community character.

The Draft Regional Plan establishes a maximum size limit for transferred TAUs. Units are limited to 1,200 square feet for 80% of transferred units and 1,800 square feet for no more than 20% of units. The amendment is intended to place an outer limit on the expansion of TAUs, while maintaining a financial incentive for property owners to redevelop or relocate tourist accommodations. Most of the Region's existing tourist units do not comply with modern environmental standards and many (over 3,000 units) are located in Stream Environment Zones.

RPU Committee Action:

The RPU Committee acted on the four topics as follows:

- The Committee distributed five alternatives for the maximum number of allocations for public input and consideration in the EIS. Alternatives range from no additional allocations to a release level that approximates the rate of development authorized by the 1987 Plan. The Committee did not specifically endorse how many allocations to release.
- The Committee advanced an allocation release system by a non-unanimous vote. The primary point of debate was if allocations should be annually evaluated and reloaded if necessary to support redevelopment. Details, including the maximum annual distribution to each Local Government, were not specified.
- The Committee unanimously endorsed modified development transfer ratios and made them subject to further economic and environmental analysis.
- The Committee advanced size limits for transferred TAUs by a non-unanimous vote. Discussion focused on the appropriate size limit.

Endorsed Plan and Code sections are attached as Exhibit C.

EIS Analysis:

For the range of allocation release levels proposed, the EIS identified potentially significant impacts to vehicle miles travelled (VMT) and roadway levels of service (LOS) in every alternative. Most of this impact is generated by the assumed realization of both residential development rights and the currently unused but available CFA. Alternatives with greater residential and commercial release rates and with less emphasis on development transfers and alternative transportation strategies are estimated to have greater impacts.

On a per-capita basis, the Draft Plan (Alternative 3) has the least impact due to the focused emphasis on compact development and alternative transportation. The Sustainable Community Strategy (SCS) that is required by California Senate Bill 375 requires a 5% per-capita reduction in Greenhouse Gas

(GHG) emissions from cars and light trucks by 2035. The draft plan generates an estimated 7% reduction and is in compliance with SB-375.

Potentially significant roadway impacts are projected to occur later in the 20 year analysis horizon based on long-range transportation modeling. There is an inherently high level of uncertainty involved with long range transportation modeling, especially given the policy shift towards walkable development and transit use. The models assumed a conservative increase in pedestrian, bicycle and transit use compared to current conditions, and avoided a more robust assumption based on the level of pedestrian, bicycle and transit use that has been realized in other mountain resort regions that have more aggressive alternative transportation programs.

Mitigation measures would release allocations in four-year increments while implementing alternative transportation programs, allocation reductions and/or roadway improvements as necessary to maintain compliance with adopted standards. Overall, the mitigation measures would allow the release of allocations every four years based on short range transportation modeling, which is much more accurate than long range modeling. If the Draft Plan's strategies for compact development and alternative transportation are effective in reducing vehicle trips, all of the available allocations could likely be released. If the strategies are ineffective, additional strategies would need to be employed or allocation quantities would need to be reduced. Modeling did not identify any significant impacts associated with the first four-year increment of commodity releases.

No other potentially significant impacts were identified.

Draft EIS mitigation measures are attached as Exhibit D.

Bi-State Recommendation:

The Bi-State Working Group reviewed non-unanimous topics and recommended compromise language with the following provisions

- Authorize 2,600 new residential allocations, 600 new residential bonus units (for use only in centers), 200,000 sf of new CFA (released only after existing supplies are used) and no new TAUs;
- Maintain the transfer ratios in the Draft Plan, limit opportunities for alternative ratios, and review the efficacy of the ratios following plan adoption;
- Further limit the size of transferred TAUs and add other provisions; and
- Establish a pilot program for on-site conversion of TAUs to Residential Units.

The Bi-State Recommendation also specified there would be no automatic recharge of additional commodities and recognized that the Governing Board may consider additional allocations if supplies are exhausted. Other details of the commodity release system were not addressed.

Specific Bi-State Recommendations are outlined in Exhibit B.

Public Comments:

Exhibit E lists comments from Agencies, Organizations and Businesses/Individuals that address development allocations and transfers.

Agency and public comments focused on the amount of new development, details of the allocation release system, whether the modified transfer ratios would meaningfully incentivize restoration and redevelopment, and appropriate size limits for transferred TAUs. Some comments also recommended an expanded allocation conversion program and/or an acquisition program for tourist units in sensitive areas.

Public Agency Comments:

Two local governments suggested that more commodities would be needed than were included in Alternative 3, and that fewer restrictions should be placed on the release of commodities. Other local governments were silent/neutral on the number and release of commodities. Local Government comments generally supported the transfer of development framework and focused on suggestions to make the transfer of development system more effective. One local jurisdiction suggested that existing provisions control the environmental impacts of TAUs, and a larger TAU size limit would not have negative impacts. Specific suggestions include:

- More than 200,000 sq. ft. of new CFA is required to meet demand within the City of South Lake Tahoe and Placer County.
- The phased release of commodities should not be tied to achieving LOS standards as recommended in the EIS mitigation measure 3.3-1. The number of commodities is not directly tied to LOS, the mitigation could provide a disincentive for redevelopment in the more developed community centers, and the mitigation could work against the goal of reducing dependence on the private automobile.
- Commodity release requirements should vary from jurisdiction to jurisdiction to allow each jurisdiction to have a sufficient number of commodities to facilitate redevelopment.
- Transfer ratios might not be high enough to incentivize transfers in jurisdictions with fewer available commodities. The plan should allow different transfer ratios in different jurisdictions based on the number of commodities available for transfer in that jurisdiction.

California State Agencies tended to be silent/neutral on the number and release of commodities and the transfer of development program, although the California Department of Justice did express concern that the bonus units proposed in Alternative 3 would increase development and the CTC expressed a concern that the proposed transfer ratios could increase property values and the cost of sensitive land acquisitions. Few comments were received on TAU size limits. Specific suggestions from California State Agencies include:

- Transfer incentives should not apply to un-developed SEZ lots because other restrictions prohibit development on those parcels.
- Need to account for all "banked" commodities held by the Tahoe Conservancy and others.
- Would TAU size limits apply to banked TAUs?
- Designated Town Centers may be too large or be in the wrong configuration to promote transit and pedestrian use.
- Transfers from sensitive land within Town Centers should get incentives.
- Transfer incentives might increase the value of sensitive lands making sensitive land acquisition more difficult.
- Public funding will be required for acquisition programs to support transfer incentives.
- Need interim targets for transfers of development and regular monitoring to be able to adjust the transfer program.

The State of Nevada did not submit written comments. Staff has met with various Nevada State Agencies and understands the State is generally supportive of the transfer of development program. State of Nevada staff did not comment on the number and release of commodities or the size of TAUs.

<u>Comments from Organizations and Advocacy Groups</u>:

Comments from environmental organizations focused on limiting the number of new commodities. Environmental organizations had mixed views of the transfer of development program. Some organizations expressed concerns about impacts at transfer receiving sites, others did not believe the program would work, and others were supportive of the program. Major comments include:

- There is no demand for additional commodities.
- Language in policy LU-3.6 requires TRPA to continually add more commodities to maintain a pool of commodities for incentives.
- New commodities should be reduced to account for banked commodities held by the California Tahoe Conservancy and others.
- Bonus units increase the overall development potential in the Region.
- Concentrating development through the transfer program could result in negative effects at the receiving site, such as nearshore, traffic, or community character impacts.
- The transfer of development program will not provide enough incentive for homeowners to participate.

Comments from business organizations generally expressed a desire for additional commodities. Business organizations were generally supportive of the transfer of development program and included suggestions to improve the viability of the program. Several organizations expressed concern over a local government's ability to prevent transfers out of its jurisdiction. Major comments include:

- There is a need for approximately 200 new TAUs, particularly on the north shore.
- Need to monitor the release of commodities to ensure enough commodities are available to facilitate redevelopment.
- Local governments should not be able to prohibit transfers out of their jurisdiction; this provides a barrier to a successful transfer program.
- Incentives should be provided to local governments that allow transfers out of their jurisdiction.
- Identify urban strip motel renewal districts and provide specific incentives to encourage redevelopment.

Comments from Individuals and Businesses:

Comments from individuals and businesses generally reflected the different views expressed by Agencies and Organizations in the Region. Many comments suggested that there was an existing oversupply of TAUs, especially on the South Shore. Public and business comments on the transfer of development program were mixed, with many comments supporting the program and many comments opposed or suggesting the program would not work. Major comments include:

- Should include a publicly funded TAU buyout program and/or allow TAUs to be converted to residential units.
- Redevelopment incentives should focus on blighted areas.

Recommendation:

A significant majority of comments that were received on the development allocation and transfer programs were debated by the RPU Committee and are addressed in the Bi-State Recommendation. The Bi-State Recommendation would establish allocation release levels with some basic limitations, refine the transfer provisions and TAU size limits that were endorsed by the RPU Committee, and establish a pilot program for on-site conversion of TAUs to residential uses.

The Bi-State Recommendation did not appear to address certain details of the allocation release system raised in public comments, such as annual release rates, modifications to the performance system and how many allocations should be held by TRPA as a match for development transfers.

Given the policy endorsements of the RPU Committee and the Bi-State Recommendations, staff recommends that details of the allocation release system be addressed as follows:

- For 2013, up to 130 residential allocations (5% of 20-year supply) should be released to local governments using the same jurisdictional split and allocation release provisions as are currently specified in Code Chapter 50. The following residential allocations would be available for each local government and would be specified in Code Section 50.4.1.C:

Jurisdiction	Current % of Allocations	Maximum 2013 Allocation
Douglas County	7.14%	9
El Dorado County	37.76%	49
Placer County	22.45%	29
City of South Lake Tahoe	15.99%	21
Washoe County	16.67%	22
Total		130

- For 2013, CFA that is currently held by local governments should remain with local governments and be distributed in accordance with current code provisions. CFA that is currently held by TRPA should be retained by TRPA for development transfer matches and other region-wide programs.
- Extend the code provision allowing local governments to retain unused allocations each year (Code Section 50.4.1.D). The provision is currently set to expire upon adoption of the Updated Regional Plan.
- Add a review and update of the performance system for allocation releases to Regional Plan Attachment 4 (Preliminary List of Priority Projects) for completion in 2013. Through this process, staff would work with local and state agencies to consider changes to the allocation release system. Before initiating this update, the Board should provide policy direction to staff or appoint liaisons to provide policy guidance.

Staff recommends the Update Committee:

1. Review and endorse the Bi-State Recommendation (Exhibit B), which would:
   - Authorize 2,600 new residential allocations, 600 new residential bonus units (for use only in centers), 200,000 sf of new CFA (released only after existing supplies are used) and no new TAUs;
   - Maintain the transfer ratios in the Draft Plan, review the efficacy of the ratios following plan adoption, and limit opportunities for alternative ratios;
   - Further limit the size of transferred TAUs and add other provisions; and
   - Establish a pilot program for on-site conversion of TAUs to Residential Units.
2. Review and endorse the Draft Mitigation Measures.
3. Consider the staff recommendation for allocation release provisions to implement the Bi State Recommendation.
4. Consider other public comments related to development allocation and transfer programs.

Exhibits:

A. Existing Development Map and Data Packet

B. Bi-State Recommendation

C. Draft Plan and Code Text - April 25, 2012

D. Draft EIS Mitigation Measures

E. List of Applicable Comment Letters