

ISSUE SUMMARY

Context/Background: To incentivize less impactful locations and types of land coverage and to accelerate water quality improvement, the Draft Regional Plan modifies a number of coverage regulations. Important amendments include:

- Increase maximum allowable coverage for redevelopment in community centers to match current requirements for new development (up to 70% of high capability land);
- Permit coverage transfers across HRA (Hydrologically Related Area) boundaries;
- Allow excess coverage mitigation across HRA boundaries;
- Provide coverage exemptions and partial credits for bike trails, pervious decks, pervious pavement, and temporary coverage – subject to location and design requirements; and
- Authorize the development of area-wide coverage management systems in Area Plans.

RPU Committee: All coverage amendments were unanimously endorsed, except permitting coverage transfers and excess coverage mitigation across HRA boundaries, which were advanced by a non-unanimous vote. The Bi-State Working Group reviewed non-unanimous actions and recommended compromise language.

EIS Analysis: The EIS identified beneficial impacts related to accelerated coverage transfers, sensitive land restoration and alternative transportation, along with potentially significant water quality impacts related to the coverage exemptions and credits. Mitigation measures would establish additional design requirements and size limits for coverage exemptions and credits.

Public Comments: Many agency and public comments supported the amendments because they promoted coverage reductions and less impactful forms of coverage, and increased financial feasibility of bike trails. Other comments raised concerns that the amendments would increase total coverage and allow coverage to be concentrated in more impactful areas.

Summary of Recommendation:

1. Review and endorse the Bi-State Recommendation (Exhibit A), which would:
 - Allow mitigation of excess coverage across HRA boundaries;
 - Continue to restrict coverage transfers to within an HRA and initiate a detailed review of coverage transfers across HRAs;
 - Retain current Regional Plan provisions for coverage within 300 feet of Lake Tahoe;
 - Support the coverage credits and exemptions in the Draft Plan; and
 - Incorporate the Alternative 4 coverage exemption for retrofits necessary to comply with ADA requirements.
2. Review and endorse the draft mitigation measure (Exhibit C).
3. Consider public comments related to coverage.

ISSUE ANALYSIS

Context/Background:

The Draft Regional Plan includes several targeted amendments to the coverage management system. The amendments are intended to accelerate attainment of the soils, water quality and other thresholds by incentivizing the use of less impactful types of coverage, incentivizing the installation of water quality BMPs, promoting coverage reductions and relocation of coverage to less sensitive lands, and promoting environmentally beneficial redevelopment. The proposed coverage amendments can be grouped into the following topics, each of which is discussed in more detail below: 1) maximum allowable coverage in community centers, 2) transfers of coverage, 3) excess coverage mitigation, 4) coverage exemptions, 5) area-wide coverage management, and 6) streamlining land capability verifications.

Maximum allowable coverage in community centers: The existing plan and code allows parcels within Community Plan Areas to transfer in coverage above the parcel's base allowable coverage. The transferred coverage must be placed on high capability lands on the receiving parcel.

The existing provisions limit maximum allowable coverage to 70 percent of the high capability land within a parcel for new development, and 50 percent of the high capability land for redevelopment projects. These limitations provide an incentive to develop undisturbed sites rather than redevelop already disturbed sites, along with an added disincentive for redevelopment because many developed sites already contain more than the allowed 50 percent coverage.

The Draft Plan would increase maximum allowable coverage on already developed sites within community centers to be consistent with the maximum allowable coverage on undeveloped sites.

All transferred coverage would continue to require water quality BMPs, and specific provisions would still apply to transfers for commercial and mixed-use projects, which require net coverage reduction at increasing rates for coverage over 50%, or that the transferred coverage be moved from more sensitive lands.

Transfers of coverage: The existing code allows coverage to be transferred between parcels in a limited number of situations including: to achieve the maximum allowable coverage within Community Plan Areas, to facilitate public service projects, and to facilitate residential development on some parcels under the IPES system. The existing code divides the Region into nine HRAs; and requires that the sending and receiving sites for all coverage transfers be within the same HRA.

The existing provision that limits transfers to within an HRA constrains the supply and increases the cost of coverage available for transfer in some HRAs. The limited supply and increased cost can serve as an impediment to environmentally beneficial redevelopment and results in fewer transfers of coverage than would occur without the HRA restriction. Fewer transfers of coverage reduce the rate

of coverage reduction and sensitive land restoration that result from coverage transfers. Fewer transfers of coverage can also slow the rate of BMP implementation that would occur on transferred coverage. The Draft Plan would allow coverage transfers to occur across HRA boundaries to accelerate the environmental benefits associated with coverage transfers.

Under the existing code, coverage transfers for commercial or tourist accommodation uses must be from existing hard coverage. Transfers for other uses can also include soft coverage or potential (i.e. base allowable) coverage. The Draft Plan would also allow soft coverage to be transferred from Stream Environment Zones (SEZs) for use in any project within community centers, which would provide a greater incentive to remove soft coverage from the most sensitive lands.

Excess coverage mitigation: The existing code requires that projects on parcels with existing coverage in excess of the parcel's allowable coverage mitigate a portion of the excess coverage. The excess coverage can be mitigated through direct on-site removal of coverage, through direct removal of coverage on a different parcel within the same HRA, or through the payment of an excess coverage mitigation fee. The mitigation fees are provided to the designated land banks, which use the fees to remove or retire coverage within the same HRA where the fee was collected.

Excess coverage mitigation is only required when projects are built. Existing development is allowed to retain non-conforming coverage indefinitely without payment of fees. This fee structure creates an additional disincentive for redevelopment.

In some HRAs, there is a very limited supply of coverage available from willing sellers. As a result, few projects perform direct off-site coverage removal. The limited supply of coverage also constrains the land banks use of the mitigation fees. Several HRAs have a backlog of unexpended mitigation fees because the land banks are unable to locate coverage for removal in those HRAs. The land banks are also not able to pool mitigation fees from multiple areas to target the highest priority coverage removal projects in the Region.

The Draft Plan would allow direct coverage removal by a project applicant and expenditure of excess coverage mitigation fees to occur anywhere in the Region. This change is expected to increase the number of projects that opt to perform direct coverage removal, and improve the efficiency and effectiveness of the land bank coverage removal programs.

The Draft Plan would also allow excess coverage to be removed in exchange for additional units of use, but only after excess coverage is mitigated (see Draft Code section 30.6.3). This incentive would promote excess coverage removal in addition to that required under the excess coverage mitigation provisions.

Finally, the Draft Plan calls for a more comprehensive review of the Excess Coverage Mitigation Fee Program following adoption of the Regional Plan.

Coverage exemptions: The existing code applies coverage limitations equally to all types of coverage, regardless of the relative environmental impact or benefit of specific types of coverage. As a result, threshold-attainment projects, such as bike trails, are subject to the same coverage regulations as non-threshold-related uses of coverage, such as parking lots. Other types of coverage such as pervious surfaces that allow water to infiltrate and small areas of isolated temporary coverage on high capability lands have limited environmental impacts, but are subject to the same limitations as more impactful types of coverage.

As a result of the current application of coverage limitations, the implementation of public non-motorized trails that are intended to attain and maintain thresholds is limited by the ability to purchase a sufficient amount of coverage. Coverage acquisitions have added up to \$500,000 per mile to the cost of trail development. In addition, property owners have no incentive to install less impactful types of coverage because they are treated the same as more impactful coverage.

To facilitate environmentally beneficial projects, incentivize the use of less impactful types of coverage, and incentivize BMP installation, the Draft Plan proposes several coverage exemptions or partial credits for properties that have a current BMP certificate. These exemptions include siting, size and design restrictions to minimize any environmental impact from the exempted coverage and are described in Draft Code section 30.4.6. The exemptions include:

- 100% exemption for non-motorized public trails;
- 25% credit for pervious pavement;
- 100% credit for pervious decks up to 500 square feet, with partial credits up to 1,000 square feet;
- 100% credit for small (< 120 sq. ft.) areas of temporary coverage.

Area-wide coverage management: The existing code applies coverage limitations to each individual parcel, except in limited cases where parcels can be combined for purposes of coverage calculations (see Code section 30.4.1.C.2.a). Applying coverage limitations at the parcel scale limits the design flexibility for redevelopment projects and provides no incentive to reduce coverage below the maximum amount allowable. Larger redevelopment projects or multiple projects within a geographic area often desire to concentrate coverage within a particular area and preserve larger areas of open space. This concentration of coverage can help to facilitate multi-parcel stormwater management systems that can include more advanced treatment options and easier maintenance.

To incentivize coverage reductions and promote greater project design flexibility, the Draft Plan proposes to allow Area Plans to delineate specific geographic areas where coverage can be managed comprehensively rather than at the parcel scale. In order to qualify for area-wide coverage management, the Area Plan would have to demonstrate how the area-wide coverage management would result in less coverage overall and less coverage in the most sensitive lands than parcel by

parcel coverage management. The requirements for an area-wide coverage management system are described in Draft Code section 13.5.3.B.1.

Streamlining land capability verifications: The existing code requires that TRPA staff perform a field verification of land capability prior to calculating allowable coverage and considering a project application. TRPA has limited staff resources and a limited field season to perform these verifications, which can often result in project delays. In some cases, the land capability of a parcel is well known based on existing information including previous field verifications in the immediate vicinity.

To improve the efficiency of the land capability verification process, the Draft Plan identifies specific situations where land capability is already well-known and where field verification is not required. The Draft Plan also allows certified third parties to perform land capability verifications. Situations where field verification is not required are detailed in Draft Code section 30.3.3.H. The detailed criteria governing certified third party land capability verifications would be developed after adoption of the Regional Plan Update and would be subject to separate Board approval.

RPU Committee Action:

The RPU committee unanimously endorsed all proposed coverage amendments, except permitting coverage transfers and excess coverage mitigation across HRA boundaries.

After significant discussion, the RPU Committee advanced provisions permitting coverage transfers and excess coverage mitigation across HRA boundaries by a non-unanimous vote. Concerns focused on potential impacts resulting from coverage concentrations and enablement of additional development projects.

Endorsed Plan and Code sections are attached as Exhibit B.

EIS Analysis:

The EIS identified several beneficial impacts related to accelerated coverage transfers, sensitive land restoration and alternative transportation, along with potentially significant water quality impacts resulting from the proposed coverage exemptions and partial credits for bike trails, pervious decks, pervious pavement, and temporary coverage.

The Draft Code limits coverage exemptions for temporary coverage and pervious decks to a maximum area of exempted coverage, but the limits on the coverage exemptions do not relate to parcel size. If multiple coverage exemptions were used in aggregate on small parcels, the exemptions could result in coverage on a significant percent of the parcels. To mitigate this potential effect, the Draft EIS proposed limiting the aggregate amount of exempted coverage to 10 percent of a parcel and limiting pervious deck and temporary coverage exemptions to 5 and 2 percent of a parcel,

respectively. The proposed mitigation would be in addition to the square foot limitations included in the Draft Code.

Similarly, the coverage exemption for non-motorized public trails did not limit the total amount of coverage that could be exempted. The Draft EIS proposed limiting this exemption to trails identified in the Bike and Pedestrian Master Plan and associated connecting trails.

The Draft Code includes siting and design requirements that must be met to qualify for the coverage exemptions. The requirements did not explicitly limit the exemptions to parcels with current BMP certificates, nor did they address all design or use considerations that could result in an environmental impact. To mitigate this potential impact, the Draft EIS recommended explicitly limiting coverage exemptions to parcels with current BMP certificates, and including additional design requirements and use limitations.

Alternative 4 includes an additional coverage exemption for retrofits to existing buildings that are necessary to comply with the Americans with Disabilities Act (ADA). This exemption had similar impacts and mitigations.

No other potentially significant impacts were identified.

Draft EIS mitigation measures are attached as Exhibit D.

Bi-State Recommendation:

The Bi-State Recommendation for coverage issues includes the following provisions:

- Allow mitigation of excess coverage across HRA boundaries;
- Continue to restrict coverage transfers to within an HRA and initiate a detailed review of coverage transfers across HRAs;
- Retain current Regional Plan provisions for coverage within 300 feet of Lake Tahoe;
- Support the coverage credits and exemptions in the Draft Plan; and
- Incorporate the Alternative 4 coverage exemption for retrofits necessary to comply with ADA requirements.

Specific Bi-State Recommendations are outlined in Exhibit A.

Public Comments:

Exhibit D lists comments from Agencies, Organizations, Individuals and Businesses that address the proposed coverage amendments.

The comments address a wide range of issues associated with the proposed coverage amendments. A strong majority of public agencies were generally supportive of the coverage amendments. Several public agencies supported a more comprehensive evaluation of the coverage management system.

The majority of comments from environmental organizations expressed concerns about environmental impacts of concentrated and exempted coverage and proposed limiting many of the proposed amendments. Business organizations tended to support the proposed amendments and many suggested expanding the amendments.

Comments from individuals and businesses were mixed and generally reflected the comments of agencies and organizations. Numerous specific suggestions to modify the coverage provisions in various ways were received.

Public Agency Comments:

Local Governments submitted few comments specific to proposed coverage changes. Staff has met with various Local Governments and understands that most Local Governments are generally supportive of the proposed coverage changes. Specific comments include:

- The coverage exemption for non-motorized public trails is essential to reduce project costs and complete missing links in the bike trail network with reduced public funding.
- Transfers of coverage should consider the connectivity of coverage in addition to land capability.

California State Agencies provided a combined summary of comments from multiple agencies. Several agencies also provided separate recommendations.

Combined comments from multiple California State Agencies were generally supportive of the proposed coverage changes and strongly supported the proposed changes for the use of excess coverage mitigation fees and the non-motorized public trail exemption. The State Agencies recommended that TRPA collaborate with key stakeholders to implement a more comprehensive reform of the coverage management system including incorporating recommendations from a recently released study of the coverage system and considering alternate approaches to the excess coverage mitigation program.

Comments from the California Department of Justice focused on potential environmental impacts resulting from the proposed coverage amendments. Specific concerns include:

- Coverage limits should be applied at the parcel or sub-watershed scale, rather than across larger areas.
- Coverage exemptions could result in a significant increase in coverage that is inconsistent with the Bailey Land Capability system.
- Area-wide coverage management and increased maximum allowable coverage on developed parcels in Town Centers would result in concentrated coverage. Water quality BMPs might not be sufficient to address runoff and nearshore degradation or impacts to tributaries could result.

The California Tahoe Conservancy was generally supportive of proposed coverage amendments and provided the following more detailed suggestions:

- Area-wide coverage management plans should require written consent of affected landowners.
- The proposal to allow excess coverage mitigation fees to be used across Hydrologically Related Areas (HRAs) should apply to fees that have already been collected.
- The requirement in the land bank MOUs to restore a sq. ft. of coverage for each sq. ft. of mitigation fee is not realistic and should be removed.

The California Department of Parks and Recreation was generally supportive of proposed coverage amendments including the Alternative 4 exemption for coverage associated with ADA requirements. The department provided the following more detailed suggestions:

- Provide coverage exemptions for all Environmental Improvement Program projects to accelerate implementation of environmentally beneficial projects.
- Expand the non-motorized public trail coverage exemption to apply to other agencies non-motorized trail plans.

The State of Nevada did not submit written comments. Staff has met with various Nevada State Agencies and understands the State Agencies are generally supportive of the proposed coverage amendments. State of Nevada staff indicated that removal of HRA restrictions for coverage transfers and mitigation, and making maximum allowable coverage the same for developed and undeveloped parcels would allow existing environmentally beneficial programs to operate more efficiently.

The Tahoe Transportation District provided comments through their Advisory Planning Commission representative. The District recommended including the Alternative 4 provision that requires that each project prioritize excess coverage mitigation in the following order: 1) direct on-site coverage removal, 2) direct off-site coverage removal, and 3) payment of an excess coverage mitigation fee.

The U.S. Forest Service did not submit written comments. Staff has met with the U.S. Forest Service and understands the Forest Service is generally supportive of the proposed coverage amendments.

The U.S. Natural Resource Conservation Service provided comments through their Advisory Planning Commission representative. Comments expressed concern that exempting some parcels from field verification of land capability could miss isolated areas of low capability land and would provide an incentive for landowners with sensitive land not to challenge inaccurately mapped land capability.

The U.S. Environmental Protection Agency provided written comments addressing the proposal to allow coverage to be transferred across HRA boundaries. The agency suggested that coverage transfers should show that the transferred coverage would not increase pollutant loading at the catchment scale, consistent with TMDL requirements.

Comments from Organizations and Advocacy Groups:

Comments from environmental organizations expressed concerns over environmental impacts from the proposed coverage amendments. Several organizations provided specific suggestions to reduce impacts of the proposed coverage amendments. Major concerns include:

- Increasing maximum allowable coverage on developed parcels in Town Centers and allowing coverage transfers across HRAs could result in more concentrated coverage and localized impacts, such as nearshore degradation.
- Coverage exemptions are inconsistent with the Bailey Land Capability system at the parcel scale.
- Area-wide coverage management could concentrate coverage where it is more impactful, and could lead to the development of potential coverage that would otherwise never be developed.
- Coverage transfers need to consider the connectivity of sending and receiving sites.
- Soft coverage has less of an impact than hard coverage and should not be converted to hard coverage.

Specific suggestions from environmental organizations include:

- TRPA should perform a comprehensive scientific re-evaluation of the soils thresholds and land coverage system rather than providing exemptions to the existing system.
- The coverage exemption for non-motorized public trails should not apply to sensitive lands.
- Excess coverage mitigation fees should be increased.
- No coverage should be able to be transferred from less sensitive to more sensitive lands.

Comments from business organizations generally supported the proposed coverage amendments and many comments suggested that the amendments would reduce unnecessary burdens and accelerate coverage reductions and environmental redevelopment. Several business organizations provided specific suggestions to expand or adjust proposed coverage amendments. Specific suggestions include:

- Include the Alternative 4 coverage exemption for infrastructure required to comply with the Americans with Disability Act in the Draft Plan. The requirement that BMPs be in place before receiving the exemption could be too costly for struggling businesses trying to comply with federal law.
- Area-wide coverage management should be tied to water quality improvements not coverage reductions. Parcels should be able to achieve 100% coverage if infrastructure is in place to handle runoff.
- Pervious deck exemptions should apply to multi-family and commercial uses and should apply to sensitive land if the water quality impacts are mitigated.

- Tahoe City has a significant amount of SEZ. Specific coverage allowances should be put in place to incentivize redevelopment in Tahoe City.

Comments from Individuals and Businesses:

Comments from individuals and businesses generally reflected the different views expressed by Agencies and Organizations in the Region. The majority of individual and business comments addressing coverage exemptions were supportive of the proposed coverage exemptions, with some comments opposed. The majority of the comments addressing changes in maximum allowable coverage were opposed to the changes, with some comments supporting. Comments on other coverage topics were somewhat evenly mixed. Some comments suggested that coverage transfers should be limited to community centers or developed parcels, and be restricted to transfers of hard coverage not potential coverage. Other comments suggested that more than 70% coverage should be allowed to incentivize redevelopment of existing developments that are near 100% covered.

Recommendation:

Many of the comments that were received on the coverage amendments address topics that are addressed in the Bi-State Recommendation.

Numerous specific modifications to the coverage amendments were proposed by a variety of commenters. Some of these suggestions were not discussed in detail by the Update Committee.

Staff recommends the Update Committee:

1. Review and endorse the Bi-State Recommendation (Exhibit A), which would:
 - Allow mitigation of excess coverage across HRA boundaries;
 - Continue to restrict coverage transfers to within an HRA and initiate a detailed review of coverage transfers across HRAs;
 - Retain current Regional Plan provisions for coverage within 300 feet of Lake Tahoe;
 - Support the coverage credits and exemptions in the Draft Plan; and
 - Incorporate the Alternative 4 coverage exemption for retrofits necessary to comply with ADA requirements.
2. Review and endorse the relevant mitigation measure in the Draft EIS (Exhibit C).
3. Consider public comments related to coverage.

Exhibits:

- A. Bi-State Recommendation
- B. Draft Plan and Code Text - April 25, 2012
- C. Draft EIS Mitigation Measures
- D. List of Applicable Comment Letters