

ISSUE SUMMARY

Context/Background: The Draft Regional Plan includes targeted amendments to minimize air pollution, accelerate attainment of air quality thresholds and comply with applicable air quality laws.

Key amendments include:

- Incentivizing a compact land use pattern that supports pedestrian, bicycle and transit use through modifications to the transfer of development program and policies related to redevelopment;
- Prioritizing pedestrian, bicycle and transit facilities and services;
- Expanding eligible uses for air quality mitigation fees; and
- Suspending applications for biomass facilities until environmental compatibility can be demonstrated.

This Issue Sheet focuses on specific amendments to air quality provisions. Land Use and Transportation amendments are addressed separately in Issue Sheets #2 through #6.

RPU Committee: The RPU Committee advanced the proposed changes related to air quality mitigation fees and biomass facilities by non-unanimous votes. The Committee also advanced a recommendation not to change the 8-hour Ozone standard by a non-unanimous vote. The Bi-State Working Group reviewed non-unanimous actions and recommended compromise language.

EIS Analysis: The EIS did not identify any significant impacts from the proposed air quality amendments, but did identify potentially significant air quality impacts related to construction practices and building/facility operations. Mitigation measures would require Region-wide policies for construction emissions and for the design and operation of buildings and other facilities.

Public Comments: Agency comments expressed concern over the feasibility of mitigation measures proposed in the Draft EIS. Environmental organizations supported more specific mitigation measures. Local governments and business interests expressed support for a provision in Alternative 4 to extend the time that businesses may be closed before having to pay new air quality mitigation fees. Comments addressing the non-unanimous issues were split on both the biomass facility prohibition and mitigation fee changes.

Summary of Recommendation:

1. Review and endorse the Bi-State Recommendation (Exhibit A), which would:
 - Include the changes as proposed in the Draft Plan related to biomass facilities and the disbursement of air quality mitigation fees;
 - Not include a new 8-hour ozone Threshold Standard; and
 - Develop a pilot program for drive-up pharmacy windows in the City of South Lake Tahoe.
2. Review and endorse the draft mitigation measures (Exhibit C)
3. Consider public comments related to air quality.

ISSUE ANALYSIS

Context/Background:

The Draft Regional Plan includes targeted amendments to minimize air pollution, accelerate attainment of air quality thresholds and comply with applicable air quality laws. Improved air quality also benefits Lake Tahoe's water quality to a limited degree by reducing atmospheric deposition of pollutants. Major air quality amendments focus on reducing automobile reliance; prioritizing pedestrian, bicycle and transit improvements; expanding the use of air quality mitigation fees; and suspending consideration of in-Region biomass facilities.

Land Use and Transportation strategies to reduce automobile reliance and expand alternative transportation infrastructure are addressed in Issue Sheets #2 through #6. The Land Use / Transportation strategy (aka "Sustainable Communities Strategy") complies with California Senate Bills 375 and 575, which require a 5% net reduction in per-capita Greenhouse Gas emissions from automobiles and light trucks in the California portion of the Region by 2035.

The disbursement of air quality mitigation fees and the prohibition of biomass facilities are addressed in more detail below.

Disbursement of Air Quality Mitigation Fees: Under the existing Regional Plan, new or transferred development or changes in operation that result in increased vehicle trips must mitigate the regional and cumulative impacts of those increased trips. With limited exceptions, increased vehicle trips must be mitigated through the payment of an air quality mitigation fee or through direct implementation of air quality improvement measures (Draft Code Sec 65.2.4 & 65.2.5).

The air quality mitigation fees are disbursed for air quality improvement projects, such as transit services or bicycle facilities, within the jurisdiction where they were collected to mitigate localized impacts. However, restricting the use of mitigation fees to the jurisdiction where they were collected does not allow fees to be pooled and directed towards the highest priority and most cost-effective projects in the Region.

The Draft Plan allows a portion of the Air Quality mitigation fees to be used anywhere in the Region, regardless of where the fee was collected (Draft Code Sec 65.2.6). This change would allow a portion of the fees to be directed towards the highest priority or most cost-effective projects to benefit air quality within the Region. The Draft Plan requires that air quality mitigation projects be developed in cooperation with Local Governments, but does not specify what portion of collected fees should be used outside the jurisdiction where the fees were generated.

Prohibition of Biomass Facilities: The existing Regional Plan provides exemptions from air pollution emission limits for biomass facilities that demonstrate a significant net reduction in emissions from pile burning of excess forest fuels (Code Sec 65.1.6.E.3). While this provision can result in a net decrease in emissions, it can also result in concentrating emissions that would otherwise be dispersed and relocating emission sources from less populated to more populated areas.

The Draft Plan removes the exemption from air pollution emission limits and suspends the acceptance of applications for biofuel facilities unless further research demonstrates the safety and environmental compatibility of such facilities within the Tahoe Region (Draft Code Sec 65.1.6.F).

A new 8-hour ozone Threshold Standard was discussed but not advanced by the RPU Committee. If approved, the new Threshold Standard would apply the stricter of the two state's ozone standards (California) regionwide.

A proposal in Alternative 4 of the Draft EIS to allow businesses to be closed for more time before having to pay new air quality mitigation fees (Code Sec 65.2.3.F) is not in the Draft Plan. This topic was the subject of significant public comment. Currently, air quality mitigation fees are required with new or expanded development, when the use of existing development generates more than 100 additional vehicle trips, or when businesses seek to reopen after not being in operation for at least 90 consecutive days in the prior 24 months. Significant public input has suggested that having to pay major new air quality mitigation fees is an impediment to the re-establishment of viable businesses in the Region's vacant commercial spaces.

RPU Committee Action:

The RPU committee advanced the proposed amendment to the disbursement of air quality mitigation fees and the prohibition on biomass facilities by non-unanimous votes. Concerns related to the disbursement of air quality mitigation fees centered on the portion of new fees that should be available for regional priorities. Concerns related to the prohibition of biomass facilities focused on whether the prohibition was necessary and whether it would exclude beneficial projects. On a non-unanimous vote, the RPU committee did not advance a proposal to adopt a new Threshold Standard equivalent to the California 8-hour ozone standard.

Draft Plan and Code sections are attached as Exhibit B.

EIS Analysis:

The Draft EIS did not identify any potentially significant impacts resulting from the proposed changes to the disbursement of air quality mitigation fees or the prohibition of biomass facilities. Mitigation is not required for these proposed amendments.

The Draft EIS identified potentially significant air quality impacts from construction activities associated with the use of newly authorized commodities. The impacts relate to emissions of ozone precursors, nitrous oxides, particulate matter, and toxic air contaminants that often occur during construction activities. Several local agencies have existing air quality regulations and permitting processes in place that would mitigate the potentially significant impact from construction emissions. However, other areas of the Region do not have comparable local regulations in place. Currently, TRPA evaluates impacts on a project by project basis and incorporates special permit conditions to address construction emissions.

The Draft EIS proposed mitigation measures 3.4-2 and 3.4-5 to ensure that consistent and feasible emission requirements are applied to construction projects. The mitigation measures would require TRPA to develop and implement a best construction practices policy for construction emissions within one year of adoption of the Regional Plan Update. Where local regulations and permitting process already mitigate construction emissions, no additional or duplicative requirements would apply. Where local regulations and permitting processes do not mitigate construction emissions, TRPA would collaborate with local governments to ensure that feasible requirements are in place to consistently address construction emissions.

The Draft EIS also identified significant impacts related to increased greenhouse gas (GHG) emissions from construction and long-term operation of buildings and other property improvements. While the Draft Plan would include all feasible measures to reduce GHG emissions from transportation, it does not include provisions to specifically reduce GHG emissions from construction activities or the long-term operation of facilities. Some portions of the Region have regulations in place to limit construction and/or operational emissions of GHG, while other portions of the Region do not.

To mitigate significant GHG emissions from the construction and long-term operation of facilities, the Draft EIS proposed mitigation measure 3.5-1. The mitigation measure would require TRPA to coordinate development and implementation of a GHG reduction policy within one year of adoption of the Regional Plan Update. The policy would identify measures to reduce construction and operational GHG emissions to the maximum extent feasible. In areas where existing requirements address GHG emissions consistent with the policy, no additional or duplicate requirements would apply. Where local requirements do not address construction and operational GHG emissions, TRPA would collaborate with local governments to ensure that feasible requirements are in place to consistently address GHG emissions.

Alternative 4 contains a provision that would extend the time that businesses may be closed before having to pay new air quality mitigation fees. The Draft EIS identified potentially significant impacts resulting from a reduction in the amount of fees available to implement air quality mitigation projects. The Draft EIS proposed mitigation measure 3.4-9, which would maintain the level of air

quality improvements through adjustments to the mitigation fee structure or regulatory requirements governing mitigation projects.

Draft EIS mitigation measures are attached as Exhibit C.

Bi-State Recommendation:

The Bi-State Working Group reviewed non-unanimous actions and recommended the following:

- Include the changes related to biomass facilities and the disbursement of air quality mitigation fees, as proposed in the Draft Plan;
- Not include a new 8-hour ozone Threshold Standard; and
- Develop and adopt a pilot program for new drive-up pharmacy windows in the City of South Lake Tahoe.

Specific Bi-State Recommendations are outlined in Exhibit A.

Public Comments:

Exhibit D lists comments from Agencies, Organizations, Businesses and Individuals that address the proposed air quality amendments and mitigation measures.

Many comments expressed concern that the mitigation measures proposed in the Draft EIS would create duplicative requirements, or requested that additional specificity be included in the mitigation measures. Many other comments expressed support for the Alternative 4 proposal to extend time that businesses may be closed before having to pay new air quality mitigation fees. Fewer comments addressed the non-unanimous issues considered by the RPU Committee, but those comments were split on the prohibition on biomass facilities and the change in the disbursement of mitigation fees.

Public Agency Comments:

Local Government comments on the proposed Air Quality amendments were mixed, with the majority of Local Governments silent/neutral on the topics. One Local Government expressed concern that allowing mitigation fees to be used outside of the jurisdictions where they were collected and extending the time basis used to calculate mitigation fees could impact project development for departments that use mitigation fees. One Local Government expressed support for the Alternative 4 proposal to extend the time of business closure before triggering new payment of mitigation fees. One Local Government opposed the prohibition of in-Region biomass facilities and indicated that existing project review criteria would address any negative impacts from biomass facilities. One local government expressed support for adopting the most stringent air quality standard Region-wide.

Two Local Governments provided comments on air quality mitigation measures 3.4-2 and 3.4-5 in the Draft EIS, which require TRPA to develop and implement a best construction practices policy for

construction emissions. The governments expressed concern that the measures would duplicate existing state and local requirements, could be infeasible in some cases, and could add cost to the construction of environmental improvement projects.

Lake Tahoe Fire Protection Agencies and California State Agencies provided comments that opposed a categorical prohibition of biomass facilities. The agencies indicated that the prohibition could unintentionally prohibit small-scale facilities or new technologies that would have little or no environmental impact. The Fire Protection Agencies indicated that a prohibition on biomass facilities was inconsistent with several recommendations from the Emergency California-Nevada Tahoe Basin Fire Commission Report, which was prompted by the Angora Fire. The Fire Protection Agencies submitted specific policy language for consideration that is intended to clarify when biomass facilities could be considered.

The California Department of Justice recommended that additional specificity be included in mitigation measure 3.4-9, which addresses impacts from the Alternative 4 proposal to extend the time of business closure before triggering new payment of air quality mitigation fees.

Nevada State Agencies did not provide written comments.

The U.S. EPA provided written comments with a specific recommendation to expand the implementation of mitigation measure 3.5-1, which addresses overall greenhouse gas emissions.

Comments from Organizations and Advocacy Groups:

Comments from environmental organizations focused on the level of specificity in the Air Quality and Greenhouse Gas mitigation measures. In general environmental organizations suggested that the mitigation measures include additional detail with regard to performance standards and implementation. One environmental organization opposed allowing a portion of mitigation fees to be used region-wide, and suggested that mitigation fees be used as close to the site generating the impact as possible.

Comments from business organizations generally supported the Alternative 4 proposal to extend the time of business closure before triggering new payment of air quality mitigation fees. Some comments suggested a more comprehensive review of the Air Quality Mitigation Fee program. Several business organizations suggested that an extended wait period before triggering new payment of mitigation fees would not result in a physical impact on the environment and should not require mitigation. Several Business Organizations also expressed concerns that mitigation measures related to construction practices and greenhouse gas emissions would duplicate existing requirements, could serve as a disincentive to redevelopment and may not be feasible to implement.

Comments from Businesses and Individuals:

Comments from businesses and individuals generally reflected the views expressed by agencies and organizations. A strong majority of comments supported the Alternative 4 proposal to extend the time of business closure before triggering new payment of air quality mitigation fees and suggested this extension would not result in environmental impacts.

Recommendation:

Some comments received on air quality topics address non-unanimous topics debated by the RPU Committee. These topics are addressed in the Bi-State Recommendation.

Many comments focused on the Alternative 4 provision that would extend the time that a business may be closed before having to pay new air quality mitigation fees. This provision was not discussed in detail by the RPU Committee, but was suggested by some committee members at the final Committee meeting before release of the Draft Plan. Many comments related to mitigation measures proposed in the Draft EIS, which have not been reviewed by the RPU Committee.

Staff recommends the Update Committee:

1. Review and endorse the Bi-State Recommendation (Exhibit A), which would:
 - Include the changes as proposed in the Draft Plan related to biomass facilities and the disbursement of air quality mitigation fees;
 - Not include a new 8-hour ozone Threshold Standard; and
 - Develop and adopt a pilot program for new drive-up pharmacy windows in the City of South Lake Tahoe.
2. Review and endorse the draft mitigation measures (Exhibit C)
3. Consider public comments related to air quality.

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