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MEMORANDUM

Date: March 4, 2014

To: Coverage Transfers Across HRAs Working Group

From: TRPA Staff

Subject: Coverage Transfers Across Hydrologic Related Areas Working Group Meeting #1 – Conceptual Approach.

Requested Action

Develop a recommended conceptual approach to coverage transfers for TRPA Regional Plan Implementation Committee (RPIC) review and consideration.

Summary

At their annual priority setting workshop in 2013, the TRPA Governing Board requested that TRPA staff complete a detailed review of coverage transfers across hydrologic zones that includes presentations from the California Tahoe Conservancy (CTC) and the Nevada Division of State Lands (NDSL). Attachment 5 of the Regional Plan lists this topic as a priority project.[1] This project originated as an issue from the Regional Plan Update process. TRPA staff convened this working group to consider possible changes to regulations governing coverage transfers across hydrologic zones. If approved by the Regional Plan Implementation Committee (RPIC) of the TRPA Governing Board, the working group may address other related topics, such as enhanced effectiveness of excess coverage mitigation.

Background

Land Coverage:

Chapter 90 of TRPA Code defines Land Coverage as being human-built impervious surfaces that prevent normal precipitation from directly reaching the surface of the land underlying the structure, therefore precluding or slowing the natural infiltration of water into the soil. Impervious cover can result in water quality degradation, flooding and soil erosion. TRPA regulates the ability to cover land in the Region through a set of coverage rules that differ by land capability, property location and whether the lot is vacant or previously developed.[2] Chapter 30 of the TRPA Code sets land coverage standards and limitations.

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[1] 2012 Regional Plan Update Attachment 5 – Preliminary List of Priority Projects, pp A5-1 thru A5-3: http://www.trpa.org/wp-content/uploads/12-12-2012_RP_Final_Adopted_Attachments_clean.pdf

[2] Land Capability determines the amount of development a site can support without experiencing soil or water degradation. The Bailey Land Capability Classification System applies to non-residential development and single family development prior to 1987, whereas the Individual Parcel Evaluation System (IPES) applies to all new single family development after 1987. TRPA allows landowners to cover from 1 to 30 percent of their parcel with impervious surfaces depending on its environmental sensitivity as defined by the Baily or IPES System.

Transfers of Land Coverage:
Coverage is a transferable commodity. Property owners can transfer existing coverage to any parcels eligible to receive additional coverage. Property owners that create less than their allotted amount of coverage may transfer that potential coverage to parcels eligible for additional coverage, however this potential coverage cannot be transferred for use in commercial, tourist, or mixed-use projects. TRPA requires coverage transfers to either reduce the total amount of coverage or move coverage to equivalent or less sensitive lands. Transfers also require the installation of BMPs on the receiving site.

TRPA Code allows coverage transfers beyond standard limits in a limited number of situations including: to achieve the maximum allowable coverage within Community Plan Areas or within designated Centers, to facilitate commercial and public service projects, and to facilitate residential development.

Hydrologically Related Areas:
The 1987 TRPA Regional Plan divided the Tahoe Region into nine designated geographical areas that incorporate one or more subwatersheds. These hydrologically related areas (HRAs) are shown in Attachment A. TRPA Code requires sending and receiving sites for all coverage transfers be within the same HRA. The HRAs are intended to limit coverage transfers to a reasonable distance from the sending site for two interrelated reasons: (1) so as not to affect water quality any differently than if the development occurred on the sending parcel, (2) avoid aggregating coverage in any particular HRA. The 2012 Regional Plan Update DEIS indicated that restricting coverage transfers to within HRAs maintained roughly the existing proportion of coverage within each HRA.[3]

Effectiveness of Coverage Transfers:
The 1987 coverage transfer policies provided environmental protection by reducing the pace of development that had occurred since the 1960s, limited new encroachment on stream environment zones and other low capability lands. They also created a number of unintended consequences. The existing provision that limits transfers within HRAs constrains the supply and increases the cost of coverage available for transfer in some HRAs. Currently, the price and availability of coverage varies dramatically throughout the Region, from approximately $5/square foot to $100/square foot. The limited supply and increased cost can serve as an impediment to environmentally redevelopment of Tahoe's urban centers, which prolongs impacts from outdated commercial development and auto-centric land use pattern.[4]

The Regional Plan Update DEIS analyzed the impacts of the 1987 HRA system and found that since each HRA contains multiple watersheds and intervening zones, Lake Tahoe is ultimately the receiving water affected by coverage transfers within HRAs.[5] The Regional Plan Update DEIS stated that allowing coverage transfers across HRA boundaries would not change the receiving water currently affected by coverage transfers.[6] Additionally, the State of California Lahontan Regional Water Quality Control Board Municipal NPDES permit for local governments in Tahoe specifies that permittees must ensure that

[3] Regional Plan Update Draft Environmental Impact Statement, *Geology, Soils, Land Capability and Coverage*, April 2012, p. 3.7-24: http://www.trpa.org/wp-content/uploads/3.7_Geology__Soils.pdf
[4] *Tahoe Basin Impervious Surface Coverage Study – Final Report*, Prepared by Environmental Incentives, LLC for the California Tahoe Conservancy, August 2012.
[5] Regional Plan Update Draft Environmental Impact Statement, *Geology, Soils, Land Capability and Coverage*, April 2012, p. 3.7-24: http://www.trpa.org/wp-content/uploads/3.7_Geology__Soils.pdf
[6] Regional Plan Update Draft Environmental Impact Statement, *Geology, Soils, Land Capability and Coverage*, April 2012, p. 3.7-33: http://www.trpa.org/wp-content/uploads/3.7_Geology__Soils.pdf

changes in land use, impervious coverage, or operations and maintenance practices do not increase a catchment's average annual baseline pollutant load.[7]

Additionally, the DEIS found that limiting coverage transfers to within HRAs results in a fragmented market with more limited and more variable supplies of coverage available for transfers to any one site than would occur without HRA restrictions. The limited and variable supply of coverage available for transfers results in substantial variation in the actual cost to acquire coverage between HRAs, and in many cases higher costs to acquire coverage than would be expected if potential sellers of coverage had to compete with each other Region-wide. The DEIS also stated that current EPA policy promotes water quality trading programs at the watershed scale because they increase the effectiveness and efficiency of achieving water quality goals. [8] The DEIS concluded that the limited supply and increased cost of coverage serve as disincentives which limit the total amount of coverage transferred. Coverage transfers provide an environmental benefit because coverage transfer ratios result in a net reduction in coverage and/or a relocation of coverage from more sensitive to less sensitive lands.[9]

TRPA also requires transferred coverage to comply with the land capability district coverage limitations of the receiving parcel and current regulatory requirements for BMPs, which results in a water quality benefit by removing coverage from low-capability lands and bringing the transferred coverage into conformance with water quality regulations. The existing HRA restrictions on coverage transfers serves as a barrier to coverage removal and relocation of coverage from sensitive lands as well as a barrier to accelerated implementation of water quality BMPs on coverage.[10]

Do to these factors, the Regional Plan DEIS found that removal of the HRA restrictions would have a beneficial effect because it would remove a barrier to coverage transfers, which could accelerate coverage reduction and removal of coverage from sensitive lands.[11] However, concerns were raised in public comments about the localized environmental impacts of allowing coverage to become more concentrated within specific areas of the Region. Comments also expressed concerns about the potential for environmental impacts resulting from allowing coverage to be transferred into areas where it could be more impactful due to local differences in precipitation and soil conditions.

Tahoe Basin Impervious Surface Coverage Study Final Report:

In August 2012, the CTC released the Tahoe Basin Impervious Surface Coverage Study Final Report, prepared by Environmental Incentives, LLC. The report intended to improve the effectiveness of

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[7] State of California Lahontan Regional Water Quality Control Board Municipal NPDES Permit No. CAG616001,p.26: http://www.waterboards.ca.gov/lahontan/board_decisions/adopted_orders/2011/docs/r6t_2011_101a1.pdf

[8] Regional Plan Update Draft Environmental Impact Statement, *Geology, Soils, Land Capability and Coverage*, April 2012, p. 3.7-30: http://www.trpa.org/wp-content/uploads/3.7_Geology__Soils.pdf

[9] Regional Plan Update Draft Environmental Impact Statement, *Geology, Soils, Land Capability and Coverage*, April 2012, p. 3.7-24: http://www.trpa.org/wp-content/uploads/3.7_Geology__Soils.pdf

[10] Regional Plan Update Draft Environmental Impact Statement, *Geology, Soils, Land Capability and Coverage*, April 2012, p. 3.7-24: http://www.trpa.org/wp-content/uploads/3.7_Geology__Soils.pdf

[11] Regional Plan Update Draft Environmental Impact Statement, *Geology, Soils, Land Capability and Coverage*, April 2012, p. 3.7-33: http://www.trpa.org/wp-content/uploads/3.7_Geology__Soils.pdf

coverage policies and to 1) address CTC and NDSL land bank excess coverage mitigation (ECM) liability concerns, and 2) enable TRPA coverage polices to facilitate the Environmental Improvement Program (EIP) and redevelopment projects that result in environmental and community benefits. The Report found that HRA restrictions of coverage transfers often inhibit beneficial projects from finding needed coverage and create market inefficiencies. It also found that although removing HRA restrictions for coverage transfers enables projects and reduces administrative burden, it may result in negative water quality impacts under certain scenarios without site-specific considerations for transfers.[12]

2012 Regional Plan Update:

At the February 24, 2012, Regional Plan Update (RPU) Committee meeting, TRPA staff recommended allowing coverage transfers across HRA boundaries to accelerate the environmental benefits associated with coverage transfers. This issue did not receive full support from the RPU Committee because of concern over unintended environmental impacts from transferring coverage across hydrologic zones.

A Bi-state consultation group representing the administrations of states, local governments, business, and environmental groups made the following recommendations, which were incorporated into the Regional Plan and TRPA Code of Ordinances Update adopted in December 2012:

I. Transfers Across Hydrologic Zones – Excess Coverage Fees
The group supports a change to allow for the use of excess coverage mitigation fees outside the hydrologic zone in which the fees are collected to achieve more strategic environmental benefit.

II. Transfers Across Hydrologic Zones – Land Coverage Transfers
Add to the TRPA "to do" list a detailed review of coverage transfers across hydrologic zones. This review will include presentations from the California Tahoe Conservancy and the Nevada Land Bank/Nevada Division of State Land.

III. Offsite Land Coverage Mitigation
The group supports a change to allow for offsite restoration across hydrologic boundaries for excess coverage mitigation purposes, provided the restoration occurs on more sensitive lands than the project area.

To realize greater environmental benefits and intended mitigation, the 2012 Regional Plan Update allowed expenditures of excess land coverage mitigation fees across HRA boundaries and removed restrictions requiring off-site coverage mitigation to occur within the same HRA, provided that off-site restoration occurs on more sensitive land than the project area (Items I and III above).[13] The TRPA Governing Board added a detailed review of coverage transfers across hydrologic zones on the Regional Plan Attachment 5 Preliminary List of Priority Projects.

[12] *Tahoe Basin Impervious Surface Coverage Study – Final Report*, Prepared by Environmental Incentives, LLC for the California Tahoe Conservancy, August 2012.
[13] TRPA Code sections 30.6.B.2 and 30.6.B.3: http://www.trpa.org/wp-content/uploads/TRPA_Code_of_Ordinances.pdf

Excess Coverage Mitigation:

Tahoe properties developed before TRPA established land coverage limitations often contain existing land coverage in excess of what current regulations allow. TRPA considers "excess coverage" as the amount of legally existing coverage within a project area that exceeds the base allowable land coverage.[14] Project applicants must mitigate excess land coverage by transferring land coverage[15]; reducing coverage on-site, reducing coverage off-site; or paying an excess coverage mitigation fee in lieu of coverage reduction.[16] TRPA assesses the excess coverage mitigation fee in proportion to the estimated project cost and extent of excess coverage in the project area.[17] At a minimum, TRPA requires small projects electing not to reduce coverage to pay a $200 excess land coverage mitigation fee. State land banks receive disbursements of TRPA excess coverage mitigation fees to perform coverage reductions and restoration of disturbed lands at a ratio of one square foot of coverage removed for every foot of excess coverage mitigated through the fee. The CTC and NDSL administer the excess coverage mitigation program for the California and Nevada portions of the Lake Tahoe Region. The CTC land bank raised concern that the current formula used to assess fees is inadequate to meet the 1:1 ratio.

Proposed Conceptual Approach

Develop feasible and implementable policies and/or other recommendations addressing coverage transfers across HRAs that meet project objectives.

Objectives:

I. *Support Regional Plan goals including protecting and enhancing water quality, accelerating restoration of sensitive lands, facilitating environmental redevelopment of Centers, and promoting affordable housing.*

II. *Address limitations, market inefficiencies and other constraints with the existing coverage transfer provisions while maintaining environmental protections.*

III. *Simplify operational processes and increase policy flexibility, transparency and accountability to reduce project costs that inhibit beneficial restoration and redevelopment projects, and to enable the policies to be administered at a reasonable cost.*

IV. *Support effective private and public sector investments.*

V. *Avoid or minimize unintended environmental effects.*

VI. *Focus on the detailed review of coverage transfers across hydrologic zones. Other topics outside the scope may be recommended for future Governing Board prioritization.*

VII. *All policies and/or recommendations addressing coverage transfers across HRAs must undergo environmental review*

[14] TRPA Code Section 30.6 – Excess Land Coverage Mitigation Program
[15] TRPA Code Section 30.4.3 – Method of Transferring Land Coverage
[16] TRPA Code Section 30.6.1.B – Excess Land Coverage Mitigation Program Options
[17] Pursuant to TRPA Code Section 30.6.1.C.2 and TRPA Rules of Procedure Section 10.8.5

Discussion items to consider may include but are not limited to:

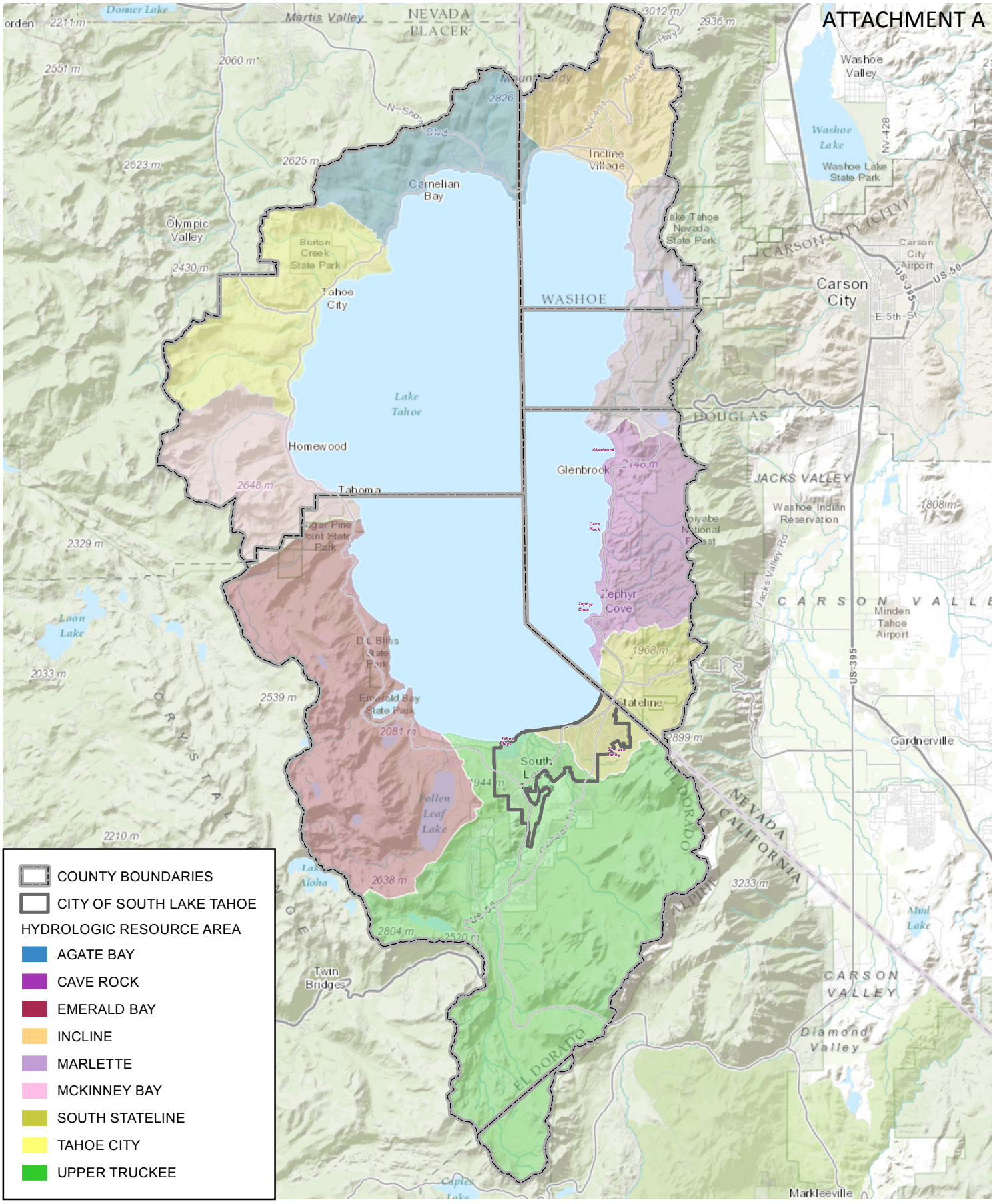
- Allow coverage transfers across HRA boundaries.
- Maintain existing coverage transfer restrictions.
- Allow transfers across HRA boundaries for coverage transferred out of sensitive lands.
- Allow transfers across HRA boundaries to Centers to facilitate environmental redevelopment.
- Allow transfers across HRA boundaries for affordable housing and/or EIP projects.
- Allow coverage transfers across HRA boundaries only from HRAs of Incline, Cave Rock and South Stateline, which currently have more coverage in aggregate than allowed.
- Allow hard coverage transfers across HRA boundaries but not soft or potential coverage transfers.
- Redefine the HRA boundaries to consider jurisdictional boundaries or North/South shore transfer areas.
- Consider reviewing the excess coverage mitigation fee system for refinement in addition to coverage transfers across hydrologic zones. Recommendations may include requesting future Governing Board prioritization.

Contact Information: If you have any questions, please contact Shay Navarro, Senior Planner, at 775.589.5282 or snavarro@trpa.org

Attachments:

A. Hydrologically Related Areas

ATTACHMENT A



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Hydrologically Related Areas, Lake Tahoe Region

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