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EASTERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

10 ALAN MILLER,
11 Plaintiff,
12 v.
13 TAHOE REGIONAL PLANNING
14 AGENCY,
15 Defendant.

No. 2:22-cv-02113-KJM-AC PS

**OBJECTIONS TO MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

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Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

Administrative Procedure Act, 5 U.S.C. § 3332

Tahoe Regional Planning Compact, PUBLIC LAW 96-551 – DEC. 19, 1980, 94
STAT. 3233

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- U.S. Supreme Court

Chapman v. California, 386 U.S. 18, 23, 26 (1967)

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Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017)

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2 *Nature* (Nava, V., Chandra, S., Aheme, J. et al. Plastic debris in lakes and reservoirs. (*Nature* 619, 317–322
3 (2023). <https://doi.org/10.1038/s41586-023-06168-4>)
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1 For the reasons set forth below, plaintiff objects to magistrate judge’s findings and recommendations (ECF 38, hereinafter
2 “OFR” or “order”) and further pleads that his motion for summary judgment (ECF 28, “MSJ”) be GRANTED, defendant’s
3 cross-motion (ECF 35, “CMSJ”) be DENIED, and that judgment be entered for plaintiff and the case be closed. Presentation
4 follows order’s outline. Plaintiff further adopts by reference all his past pleading, motions, and exhibits. (Fed. R. Civ. P. 10(c))
5 This motion is filed timely after plaintiff contacted the Office of the Clerk, learning the court would be closed on Friday,
6 November 24, 2023 for a Thanksgiving “day-after” holiday at the discretion of the Chief Judge of the District, though the closure
7 was not announced on the court’s website, as shown in Exhibit 1. (Local Rule 121(b), Fed. R. Civ. P. 6(a)(1) and 77))

8 Contrary to what may be gleaned from the synopsis of the magistrate judge (MJ), the actual gravamen of plaintiff’s
9 complaint was that in multiple instances, defendant revised a project approval contrary to “a manner required by law.” A *fortiori*,
10 plaintiff objects to MJ’s fallacious legal premise that “the ultimate question before the court is whether the Governing Board’s
11 denial of plaintiff’s appeal was supported by substantial evidence and therefore not a ‘prejudicial abuse of discretion’ within the
12 meaning of Article VI(j)(5) of the Tahoe Regional Planning Compact (‘the Compact’).” (OFR 1:19-22) Pursuant to the express
13 language of this provision, an adjudicatory act or decision of the agency to approve or disapprove a project may be supported by
14 substantial evidence and yet amount to a “prejudicial abuse of discretion”; this occurs when or “if the agency has not proceeded
15 in a manner required by law.”

16 That fallacious premise is fatal to MJ’s findings and recommendations whereas the rhetoric in plaintiff’s “twelve separate
17 claims of violative conduct” (OFR 1:18-19) incessantly expound “what the law requires” directly followed by citations to
18 defendant’s unlawful actions—*nemo potest nisi quod de jure potest*. The defendant’s CMSJ did not rebut that it followed
19 requisite Constitutional law, statutes, and regulations, nor did it meet its heavy burden to prove “beyond a reasonable doubt” that
20 its error was harmless (*Chapman v. California*, 386 U.S. 18, 23, 26 (1967) (before a federal constitutional error can be held
21 harmless the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt; it’s not harmless
22 error where government failed to demonstrate beyond reasonable doubt that error did not contribute to adverse adjudication)).

23 Even where plaintiff’s MSJ sparsely impugns the defendant’s adjudication of the evidence, the thrust of such claim was
24 almost entirely whether or not agency deference was due to defendant’s finding, and very rarely on whether the evidence could
25 be trivially construed as “substantial.” Plaintiff is entitled that court give no or lesser agency deference to defendant where
26 deference is not or less warranted as a matter of law.

27 Plaintiff further objects to MJ’s myopic focus on defendant’s culled *de minimis* evidence as “substantial” contrary to the
28 Compact’s holistic *de integro* requirement that defendant base its decisions upon “substantial evidence in light of the whole

record.” Notwithstanding, the district court when acting as an appellate tribunal, must consider the record as a whole, weighing both the evidence that supports and the evidence that detracts from the agency’s decision (see, *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017); *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001); see also *Int’l Union of Painter & Allied Trades, Dist. 15, Local 159 v. J & R Flooring, Inc.*, 656 F.3d 860, 865 (9th Cir. 2011); *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 652 (9th Cir. 2010) (“The ALJ is expected to consider the record as a whole, including all witness testimony and each medical report, before entering findings”). The dual requirements that court holistically “weigh the evidence” and that it not “exercise its independent judgment on evidence” are not mutually exclusive.

I. Errors and Objections On Review Of The Order: “Complaint”

A two-pronged judicial review standard (OFR 5:27-28) is not needed for claims not pertaining to sufficiency of the soils-hydro report (Claim 9) and foundation excess impervious coverage (Claim 10), for all other claims should be reviewed to determine if the agency has not proceeded in a manner required by law, with “violations” punishable by civil liability (Compact Art(IV)(j)) and remedy also available through tower removal. Only discretionary acts taken lawfully may be reviewed to determine whether the act or decision of the agency was not supported by substantial evidence in light of the whole record, and this finding is irrelevant to the ten other claims. To omit or dismiss acts contrary to law in the analysis is a clearly erroneous and manifest error of law committed repeatedly in the order, in complete disregard of controlling law. Defendant is therefore compelled to again restate in opposition to the order much of what has already been written. 28 U. S. C. §636(b)(1)(A) specifies: “A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.” Such reconsideration of this pretrial order from the MJ, and my pretrial motions, is duly sought. MJ’s dismissal of plaintiff’s motion to supplement the administrative record (ECF 29, hereinafter “MSAR”) is over strenuous objection.

II. Legal Background

This case is about a hole drilled in the ground that gushed like an artesian spring with legal and Constitutional issues the court has failed to address, in reversible error. The issues may be briefly characterized as follows: Congress could not intrude its federal authority into the region to directly deprive plaintiff and other persons in the region with a law trespassing civil rights to participate in agency decision-making, with no public notice concerning projects or code variances of public interest and no opportunity to comment or to obtain a fair and unbiased hearing before the Governing Board without substantial cost. In any case, California did not yield its state Constitutional sovereignty under the Compact and Congress and the two states did not do that, but enacted just the opposite, procedures to freely guarantee civil rights defendant shall follow. Therefore, what the

1 Congress could not do directly, defendant can not do indirectly through its regulations and its regulatory delegations of authority
2 (*Henderson v. Mayor of the City of New York*) 92 U.S. 259, 263 (1875)), which do precisely the above, are unconstitutional and
3 must be abolished as a matter of law. (ECF 32, hereinafter “Reply,” 1:8-16) These regulatory laws were used to deprive plaintiff
4 of several important, protected civil rights in the appeal that led to this case. (Reply 2:21-25; 3:21-24 to 4:1-5, MSJ 18:5-6,
5 MSAR 18:1-11) This is a readily addressed harm and relief is available in this matter if the court will do its duty. TRPA can
6 simply put all variance and permit proposals before the public at a Governing Board meeting for approval and restore the
7 public’s civil rights, as a first step. (TRPA permits expire by law three years after adoption. (Art(VI)(p)) Only permits issued in
8 the last three years or pending legal final action are legally affected.)

9 OFR 1:21 cites to “Federal Rule of Civil Procedure 65” which is a reference to Injunctions and Restraining Orders. Since
10 this order is neither, this reference appears to be an error, possibly a clerical error, as plaintiff is not aware of why § 65 would
11 apply in this case, and the order does not reference either an injunction or restraining order or include required elements for either
12 of those to my knowledge, so it can not serve as such an order. This appears to be a harmless clerical error unless plaintiff is
13 being enjoined or restrained under the section in some way that is opaque, in which case plaintiff objects.

14 As presented in the order, the facts are not genuine. At OFR 2:10, the statement that plaintiff appealed a “Plan Revision” is
15 an error of fact, as what was appealed was a Variance, which is covered under different parts of the Compact law, as discussed in
16 the Reply at 7:16 -8:29. At OFR 2:2, the order says “he alleges his appeal was arbitrarily and capriciously denied.” What plaintiff
17 wrote was not an “allegation,” but a statement about judicial review standards: “The reviewing entity is generally charged to
18 determine on the basis of the AR whether the action taken was supported by the whole record, or was arbitrary and capricious, or
19 not in accordance with law.” Note the use of “generally,” as this was a preliminary general discussion, much augmented and
20 revised in the Reply. (1: fn1) Thus, to characterize this statement as an “allegation” is clearly erroneous and prejudicially biased.
21 The order continues at 2:19, correctly stating plaintiff submitted twelve separate claims of violative conduct, and opines “though
22 the ultimate question before the court is whether the Governing Board’s denial of plaintiff’s appeal was supported by ‘substantial
23 evidence’ and therefore not a ‘prejudicial abuse of discretion.’” This fairly summarizes defendant’s incomplete interpretation,
24 conveniently leaving out mention of the other half, when actions are “not in accordance with law,” despite numerous violations
25 of Compact law and its own regulations identified throughout the plaintiff’s MSJ, MSAR and Reply. The order then proceeds to
26 ignore every violation factually cited from the administrative record (AR), erroneously concluding no law was broken because it
27 is within defendant’s discretion to act in a manner contrary to the law. The order grants defendant wide deference to act contrary
28 to law throughout, where no deference is warranted or lawful. Plaintiff’s motions discuss ministerial acts which defendant did not

1 carry out in good faith and duty to law, and little more, concerning requirements which are non-discretionary. This court
2 deference is a major and reversible error of law riddling the order.

3 The Regional Plan “threshold” standards are cited at OFR 3:3 and plaintiff will simply note for the public record that the
4 Regional Plan, as majorly amended in 2012, does not contain the words “wireless” or “microplastics” because the defendant has
5 no standards applicable to wireless facilities emitting wireless radiation and microplastics, as it has approved here, and has no
6 applicable ordinances for wireless macrotowers. It misapplies ordinances for “linear public utility” facility exemptions for an
7 excuse to skip environmental review requirements through unexpressed, tortured interpretations. The order cites such standards
8 are “necessary” for the maintenance of the significant scenic, recreational, scientific, or natural values of the region, or to
9 maintain public health and safety in the region. (OFR 3:5-6) Nonetheless defendant doesn’t have any standards for the plastics
10 and wireless technologies it is approving, to great detriment, for in addition to the scientifically-incontrovertible damaging effects
11 of electromagnetic radiation from the tower(s) on biological organisms, defendant is risking the drinking water supply for
12 millions of residents of California and Nevada with contamination by microplastics, with no TRPA analysis beyond approving a
13 “junk science” report from a Verizon consultant. Defendant was further willing to risk potentially significant effects to ground
14 water without a hard, scientific, look for this tower. What is at stake for the future of Lake Tahoe is of no apparent consequence
15 to court’s consideration as it erroneously removes the bridle and legal bit from the incompetent defendant, which is literally
16 destroying the purity of a world-class resource with its lawlessness, here aided by the court—with a large number of errors as
17 will be discussed. Lake Tahoe is very special and among the most contaminated with microplastics of large water bodies in the
18 world thus far studied as disclosed in the science journal *Nature* (Nava, V., Chandra, S., Aheme, J. et al. Plastic debris in lakes
19 and reservoirs. (*Nature* 619, 317–322 (2023)) Plaintiff implores that the public and court must keep these facts in mind as it
20 reviews this order granting defendant wide deference to do as it will without any regard for the laws or the people it serves.

21 The order discusses that the Compact directs the agency to adopt and administer ordinances, rules and regulations, stating:
22 “In compliance with that instruction, TRPA has adopted a Code of Ordinances . . .” (OFR 3:10) Boundaries for these agency
23 actions are given by the Compact and have been broadly trespassed in this case. My Reply cited numerous regulations TRPA
24 adopted which are contrary to and inconsistent with the Compact, depriving guaranteed civil rights, so defendant has acted in a
25 number of instances that are not “[i]n compliance with that instruction.” (Reply 3:2-20) See OFR 3:14, citing Compact mandates
26 for defendant to administer its ordinances without any discretion to interpret its regulations contrary to the Compact; the court
27 must not grant defendant license to do so, in error. Court fails to comment on the illegal regulations presented, and simply
28 overlooks them as though it is proper to conduct its review under regulations adopted that gut Compact public participation

1 requirements and set the stage for defendant to repeatedly violate the law and evade judicial review, a reversible manifest
2 constitutional error. (Reply 13:1-9) Even assuming that was so, plaintiff's MSJ, MSAR, and Reply all cite numerous instances
3 where defendant did not faithfully carry out its duties under the faulty, illegal regulations. Therefore, any way one looks at it, the
4 court has committed gross reversible errors of review. The inference is clear: the case outcome has been predetermined,
5 prejudicially by court, to uphold defendant's action to approve the tower under shattered presumptions of deference, despite the
6 genuine facts and despite the laws broken, for reasons not articulated in the order. Chilling public redress of grievances while
7 depriving civil rights is the implied outcome if the prejudicial order stands.

8 OFR 3:19-20 cites that any development project must meet "applicable" regulations established by the agency. That being
9 true, it is an error for the court to opine in any way that the staff Variance and Plan Revision approvals, or the appeal, carried out
10 under illegal regulations, were in any way proper or in compliance as stated. That is frankly impossible with public input
11 systematically deprived and suppressed as it has been illegally for decades. Nonetheless, the order erroneously states, "The
12 Executive Director (ED) has authority to modify project approvals. See ROP 5.15." (OFR 3:23-24) The ED has no such
13 authority under the Compact; approval of projects and modifications is solely prescribed to the Governing Board by vote at a
14 public meeting. (Art(III)(g), MSJ 1612-17:7, Reply 2:1-15) Delegation of this approval authority is illegal, for it is improper for a
15 project to be approved by the Governing Board members (BMs) to be later modified out of the public eye by the ED, who
16 simply can not be empowered with this assumed, delegated authority—as directed by Congress. The court has simply looked
17 past all this illegality, erroneously and without comment as a manifest constitutional error of law. Presuming the court has the
18 power and duty to overturn the illegal regulations, failure to do so and to silently ignore the whole subject as if it is moot when it
19 is fundamental is a gross miscarriage of justice.

20 The finding of OFR 3:19-20 is again recited at OFR 4:2-3 with 4:4-6 adding, "some permits being issued by the ED, some
21 applications considered by a Hearings Officer, and some heard by the Governing Board, depending on the project at issue. See
22 Code § 2.2.2." Here the court is finding the whole illegal regulatory scheme plaintiff uncovered and discussed in the Reply is
23 legally proper, without comment, merely reciting from defendant's CMSJ. It is not proper and this is a gross error of law which
24 court fails to address in any way.

25 Plaintiff's Reply shows the AR contains no evidence of legal compliance with public noticing requirements (Reply 8:15-
26 20), for this project or any other in years, yet the order states, "The Board meets once per month at a noticed public meeting,"
27 citing Art(III)(d). (OFR 4:10-11) If court thinks the public noticing deficiencies of the defendant plaintiff discussed as a violation
28 of law is of no consequence, it should state why for the record. In plaintiff's view, TRPA's failures to comply with its own public
Objections to Findings & Recommendations

1 noticing rules for newspaper noticing not only violates the Compact, but deprives the general public and those without internet
2 savvy or access, or the desire or time to go hunt information down on TRPA's massive and confounding website, of public
3 notice in a deliberate attempt to disempower and disenfranchise the public. Such failure can not be considered a "harmless error"
4 as it deprives the public, in a manner contrary to law, of among its most basic rights to know the activities of its servants and to
5 participate in public decision-making, and the court excusing and bypassing this deficiency without comment is a manifest
6 constitutional error of law. Far beyond that, TRPA has deprived the public of any notice, internet or otherwise, for whole classes
7 of projects and variances under its illegal regulations. (Reply 2:1-7, 4: fn11)

8 Court cites that "TRPA's Code creates a means to appeal an Executive Director or Hearings Officer decision to the
9 Governing Board" (OFR 4:13-14) without comment on the extensive discussions in my Reply disclosing the illegality of these
10 regulations. That is an error of law compounded by the court by failing to recognize what ought to be plain error in light of my
11 Reply, with the better part of the page taken up with discussion of appeals which have no basis in law, including Legal
12 Committee hearings concerning appeals: There was never any latitude for defendant to adopt an "appeal" regulatory scheme for
13 its illegal approvals by the ED and HOs, likely improperly for its own convenience. (Reply 2:23-25) The Compact specifies that
14 all variance and project approvals are subject to a Governing Board vote, and may be redressed through litigation only.
15 Defendant corrupted the whole intent of Congress and the states with its appeal set-up, a corruption court is sanctioning in gross
16 reversible error with its mistake-ridden order, and to which plaintiff strenuously objects as affecting substantive civil rights and
17 potential case outcomes, including my own. Court's failure to address the constitutionally-invalid regulatory scheme for project
18 and variance approvals by staff, and TRPA appeals, merely postpones adequate resolution subject to court appeal and *de novo*
19 review unless reversed on review by District Judge.

20 The only statement with veracity on OFR 4 is at 27, "Failure to take such action shall be deemed a denial of the appeal.
21 ROP § 11.6.2" The appeal plaintiff lodged was denied by a failure to take action in response to his Notice of Appeal on the
22 Variance, which was not the subject or focus of defendant's appeal administration, which erroneously focused on the "Plan
23 Revision." (Reply 7:19-8:6) Despite the extensive discussion plaintiff provided the court erroneously fails to consider these
24 actions "contrary to the manner of law," and that my appeal was legally decided by inaction. It failed by default because the
25 Board members (BMs) never voted on my appeal of the Variance. They voted on a Plan Revision application. (Reply 8: 7-12)

26 **III. Legal Standard**

27 The order discusses the legal review standard, citing Compact law, and noting at 5:27-28 the statutory definition of
28 "prejudicial abuse of discretion," with that two-fold mandate showing that "the agency has not proceeded in a manner required

1 by law” is fully sufficient and of equal legal standing with “ if the act or decision of the agency was not supported by substantial
2 evidence *in light of the whole record.*” (*emphasis added*) Court ignoring the former part of the review standard is a clear error,
3 and a manifest constitutional error by ensuring that legitimate review rights are usurped and constitutional civil rights to due
4 process and equal treatment are compromised to exact maximal harm.

5 The order notes at 6:11-12 that in reviewing the AR the court must determine “whether TRPA’s *procedures* provided
6 ‘substantial evidence’ of compliance with the Compact language.” (*emphasis added*) This court has not yet done that, for it has
7 failed to comment on the discussion of Rules of Procedure (ROP) and the Code of Ordinances (COO) adopted by defendant in
8 a manner contrary to law as alleged in the Reply at pages 2-3. It is a manifest error for the court to find upon review that the
9 procedures comply with the Compact language when they do not. The remainder of the page cites various meanings for
10 “substantial evidence” concerning project-level judicial reviews in case law, which cases are wholly unenlightening concerning
11 the matter of illegal regulations the court has skipped past. The most “substantial evidence” in this case is that defendant’s
12 regulations violate the Compact, a manifest constitutional error the court has not addressed.

13 IV. Administrative History

14 1. The Initiation of the Cell Tower Project

15 Court, like defendant, notes plaintiff didn’t appeal the Project approval (in 2021). (OFR 7:20-23) That this is “inaccurate
16 and irrelevant” as a matter of law in this case is addressed in plaintiff’s Reply (10:6, fn48) and my Reply’s assertions are not
17 addressed with any specificity by court in the order.

18 2. The Plan Revision (Variance)

19 The “Revised: Soil Project Approval Waiver” cited (OFR 8:2-3) constitutes a Variance from the TRPA Code of
20 Ordinances (COO), as discussed in the Reply. (7:15-8:14) Defendant’s issuance of the revised permit (OFR 8:12-13) was
21 unknown to plaintiff prior to filing my NOA on the Variance. (Reply 8:7-14, fn36) It was this Variance that was the basis of the
22 appeal. The court errs as a matter of fact in stating, “On August 22, 2022, plaintiff appealed the Plan Revision . . .” There is no
23 legal evidence for that in the AR, as alleged in the Reply, and nowhere rebutted.

24 3. Plaintiff’s Appeal of the Variance to the Governing Board and Request for Stay

25 Plaintiff again objects to the whole of the appeal discussion in OFR 8:16-24 as having no basis in law, being a perversion
26 of the Compact’s mandates that deprives plaintiff and the public of constitutionally protected civil rights. It is factually erroneous
27 and incomplete, taking no note of the illegal scheduling of the appeal hearing by defendant that further harmed plaintiff by
28 depriving due process rights and rights to equal treatment under the laws for a fair hearing. See section VI.B.2., Claim 2, below.

1 4. Observations of the Excavation by a Certified Professional Soil Scientist

2 Plaintiff has noted that what can be said of the soil scientist's observations in response to OFR 9:2-3 is that they were post-
3 *hoc* rationalizations for examinations required prior to approval and not performed, with TRPA staff incompetent to administer
4 its regulations pre-approval, and without expertise the agency needs and does not possess, as discussed in plaintiff's Reply at
5 10:13-18. It is only defendant's illegal regulations that give it opportunity to err and escape review for its faulty acceptance of
6 ground water investigations by unqualified professionals, as adjudged by unqualified professionals on the TRPA staff.

7 At OFR 9:11 there is a parenthetical reference by the court to an "audio file" of the Legal Committee hearing on the
8 appeal. Plaintiff's Reply alleges the audio recordings of both the Legal Committee and the appeal hearings were not provided as
9 part of the certified AR, though they exist online. Plaintiff was mistaken, and now concedes that any allegations in the Reply at
10 II.B.5. and thereafter are moot concerning audio recordings absent from the AR.

11 5. Lawsuit Procedural Background

12 Court notes at OFR 9:19, the action was begun on November 23, 2022. The day after defendant's final reply was due and
13 didn't come, MJ issued her recommendation, which must be some kind of record in terms of work turnaround, making my
14 opposition reply due Thanksgiving Day. The MJ's work is at least poetic justice culminating my "Thanksgiving lawsuit" input
15 after a year. Besides that, Plaintiff must again object to the sentence ending with, "... voted to deny plaintiff's appeal" as an error
16 of fact by defendant and here at OFR 9:16-17. The Governing Board did not vote on my Variance appeal, voting instead on a
17 Plan Revision, which involves a different part of the Compact law, despite my admonitions in pre-hearing comments (AR2867)
18 and testimony at the appeal hearing. Therefore, this error by the court appears to be one of mixed law and fact. (Reply 7:15-8:6)

19 **V. Motion to Supplement the Record**

20 While plaintiff suggested that the Administrative Procedures Act or APA (5 U.S.C.) provides controlling case law
21 informative to the judicial review process (Reply 14:fn66), the order's reference to the APA is a bit disturbing at OFR 10:18-19,
22 "When considering an APA case the district court 'reviews the whole record or those parts of it cited by a party. See 5 U.S.C. §
23 702.'" This is not "an APA case" but rather a case involving judicial review under the Compact, as noted previously by the
24 order. Unless court is reasonably conceding plaintiff's assertions (without comment) there could be an error with the judicial
25 review standards being applied and court should clarify this matter. Nonetheless, the whole record is implicated by the Compact
26 review standards.

27 On the "presumption of regularity" and "concrete evidence" (OFR 10:20-28) with regard to the AR, defendant's phone
28 and email records are not in defendant's constructive possession as discussed thoroughly in plaintiff's MSAR 7:1-20; an agency

1 has constructive possession of records if it has the right to control the records, either directly or through another person.
2 Defendant does not possess this, yet certifies the record as complete, with the court implying this whole illegal set-up is wholly
3 proper without comment, despite the public record requirements put forward in the MSAR. (4:18- 7:21)

4 Here we have court's conclusion (OFR 11:16-20), reciting defendant's CMSJ, and then agreeing with defendant's
5 statement, that matters in the MSAR "are outside of the scope of the court's review in this case and that plaintiff has not
6 identified any bad-faith agency actions to warrant record supplementation. ECF No. 31 at 4-9. The undersigned [MJ] agrees with
7 defendant that the record does not require supplementation in this case." In this manner, the court is thereby dismissing any
8 findings under *Lands Council v. Powell* (OFR 12:6). Court is silently condoning and supporting illegal acts by defendant with a
9 faulty analysis, if any, of the evidence or facts in the AR, in complete and unwarranted deference to defendant, as is discussed
10 herein and in plaintiff's prior motions. Bad faith action began with the very first written communiqué from defendant to plaintiff,
11 the stay response, which tainted everything that followed with illegally scheduling an appeal hearing in the absence of a
12 Statement of Appeal (SOA), as will be discussed below in VI.C. (p.14) This court finding is without basis in law and a reversible
13 error based on plaintiff's prior motions and what follows.

14 A. Oath of Office Concern Does Not Demonstrate Bad Faith

15 The order asserts defendant's own claims concerning oaths of office without addressing the legal requirements for federal
16 appointees cited in plaintiff's FOIA letter, MSAR Exhibit 1. (OFR 11:23-27) To agree with defendant's assertions that TRPA's
17 federal appointees only owe allegiance to the entities they otherwise serve is specious and without basis in law. In the first place,
18 very few BMs are appointed by a federal authority other than TRPA, and so would not otherwise subscribe to the required
19 federal oath in accordance with the legal requirements as stated in MSAR's Exhibit 1. In the second place, certain BMs are
20 appointed as "members at large" and do not serve an appointing power prescribed by the Compact other than TRPA, and are
21 therefore required to subscribe the oath for TRPA (like the others).

22 The law is the law, and plaintiff's MSAR claims this is of grave importance as a matter of law, for it legally invalidates all
23 that the TRPA does insofar as decisions by presumed traitors lacking proper governmental authority can not be legally binding
24 on the governed, a manifest error of law to allow by the court in its dismissal. None of the individuals referenced in MSAR
25 Exhibit 1 have satisfied their Constitutional obligations or have adhered to 5 U.S. Code § 3332 thereby nullifying, or at a
26 minimum, calling into question the legitimacy of their appointments or positions. Violators shall be removed from office and
27 permanently enjoined from further governmental service. Since none of the appointees referenced have produced a compliant,
28 mandatory oath of office affidavit, it follows that plaintiff has established a *prima facie* case for remedy such as petition for

1 issuance of a *writ of quo warranto* and the burden of proof then falls on the appointees to prove to otherwise and to produce the
2 affidavits as required by law. *See e.g., Ford v. Leithead-Todd*, 139 Haw. 129, 384 P.3d 905 (Ct. App. 2016); *People ex rel. Lacey*
3 *v. Robles*, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2d Dist. 2020). Oath failures are currently widespread at all levels of
4 government, including courts. TRPA is a case in point.

5 Court states the Compact does not contain an oath of office requirement (OFR 12:1-5) but that is irrelevant. As for most
6 agencies, the requirement is not in the organic statute but rather in the APA, to cover all in federal service. *See* ECF 32, 7:22-26.
7 It is a manifest error of law in failing to supplement the AR with this oath deficiency by ignoring all lawbreaking and acts in bad
8 faith. The failure to subscribe to a required oath can only be considered potentially treasonous, “bad faith” in the extreme.

9 B. The Administrative Record Already Contains Public Comments

10 The court cites plaintiff’s allegation of “bad faith” by defendant failing to publish public comments (OFR 12:7-8), not
11 mentioning the fact that they must be published “contemporaneously with the meeting” as required by law. (MSAR 6:12-13)
12 Court fails to note over 1200 pages of comments in the AR were not published online until many months later, long after the
13 BMs voted and public interest had waned. (MSAR 6:14-24) Court erroneously supports defendant’s censoring of public
14 comments to prevent Board consideration. Defendant’s action was done in bad faith to deprive plaintiff and others of the civil
15 rights to a fair and unbiased hearing. Here, it was clearly done to prejudice the appeal hearing outcome by limiting the comments
16 presented to those of plaintiff, the Project applicant, and a two other minor comment emails. (MSAR 8:fn4) Defendant has no
17 authority or right to cherry-pick which public comments the Board is presented with, and takes this illicit activity as their illegal
18 duty. It is a manifest error for the court to sanction this subterfuge rather than reproach it.

19 The order says plaintiff fails to identify a deficiency in the record, and there is nothing to supplement in the AR. (OFR
20 12:22-23) Plaintiff doesn’t agree, and cites the failure to *publish* public comments contemporaneously with the meeting (not just
21 list them in the AR) as information not obtainable from the AR, which court dismisses. If the court is refuting plaintiff’s
22 allegations, plaintiff would have the court explain its disposition of defendant’s own insertion of extra-record information into the
23 certified AR after the fact concerning emails in the certified AR, without motion for court leave to do so, in light of plaintiff’s
24 rebuttal and over plaintiff’s strenuous objections. *See* defendant’s opposition to the MSAR and plaintiff’s rebuttal. (ECF 32, 8:6-
25 23) Court dismisses the matter without comment, siding with defendant. Plaintiff has no indication the court has refused
26 admission of the unverifiable electronic information, which plaintiff suggests would be a plain and prejudicially-biased error to
27 admit. The implication and inference is the certified AR is deficient or defendant wouldn’t have taken such action in the
28 demonstrable disregard for rules it is so prone to, undermining court’s assertion.

1 C. There Is No Concrete Evidence of the Existence of Additional Relevant Documents

2 Court opines plaintiff has presented “no concrete evidence” of the existence of additional relevant documents and
3 dismisses the MSAR. The MSAR evidence is that defendant has set up “official channels” for email and telephone calls it can’t
4 retrieve records from for administrative record purposes. That’s the evidence, not hunches and suspicions, but official email
5 defendant has no access to. Why should BM traitors be given the benefit of the doubt that they don’t communicate among
6 themselves unbeknownst to defendant’s electronic systems? That’s why it’s just a perfect set-up for criminal activities, and why
7 it’s a manifest constitutional error for the court to overlook it. Knowing defendant and BMs, they surely exploit it. If plaintiff has
8 no proof of *specific* documents, how could he ever? The defendant’s administrative system is set up to evade review. (MSAR 9)
9 The court has nothing to say as a matter of justice about defendant’s mishandling of the public records and deliberate subterfuge
10 with electronic records to deprive plaintiff of a fair and honest hearing. The MSAR is thus summarily denied based on errors of
11 various sorts so the case “proceeds on the merits of the administrative record as filed by the defendant.” (OFR 12:24) Plaintiff
12 again objects, to MSAR dismissal, and for leaving the matter hanging as to whether the court erroneously admitted prejudicial
13 extra-record evidence in defendant’s Opposition filing (ECF 31), as it may have from the failure to include “as certified” here.

14 **VI. Summary Judgment Analysis**

15 A. Claim 1: “August 5, 2022 Exception Letter”

16 The court begins the summary judgment analysis citing plaintiff’s MSJ at pages 1 and 7. The associated court references
17 to the AR citations in the MSJ at 7 are erroneous upon examination: “ECF No. 28 at 7, citing AR 0738-0473, 0753-0755, 0168.”
18 If one examines page 7, those are not plaintiff’s citations, none of the above AR numbers appear, and it is unclear what the MJ is
19 referring to with a 265-page “reverse” citation. What plaintiff wrote, with pointed references, was: “I filed the NOA and stay
20 request on August 22, 2022, refuting that the RGR was professionally appropriate, correct or adequate to determine that
21 interference to a ground water table would not occur, as required, at length in the record (e.g., AR0743-AR0747, and later at
22 AR1295-AR1296, AR2865-AR2866, Ms. Carpenter’s letter (AR1188-AR1205) and Claim 8, below).” (MSJ 7:18-21). The
23 judge’s citations appear to be material errors of some sort, beyond mere clerical errors, and point to a failure to properly examine
24 the AR, leading to errors of fact and lending weight to other error findings demonstrated herein.

25 The MJ concludes the defendant decision on Claim 1 is “well-supported by the evidence,” (OFR 14:8-20) if not the law,
26 for only in a one-sided sense does it seemingly pass judicial review muster, as the court is not examining the specifics of the
27 laws, as in my SOA. Court can avoid technical matters in the evidence if it grants deference and all discretion to defendant, erring
28 in seeing the facts before it concerning bad faith. Plaintiff turns court back to the law, since it failed to examine the rudiments and

1 whether defendant acted here in a manner contrary to law, as alleged. The gloss-over defendant narrative recited by the court,
2 and defendant's assertions that it did not issue a Variance, do not withstand legal scrutiny (see Reply 9: 8-19) and the AR does
3 not demonstrate that the applicable code sections are met as a matter of law, as sufficiently demonstrated in MSJ 14:1-17 and
4 associated AR references therein. Defendant's claimed Code compliance was all roundly refuted and demonstrated as being
5 illegal to approve under non-discretionary, ministerial application and administrative review requirements. (Reply 9:20-10:7) As
6 ignored by defendant in its motions, here court is also ignoring all actions conducted in a manner contrary to law, and
7 erroneously giving defendant discretion it does not possess under a high-level "substantial evidence" finding when the
8 undergirding legal details render that finding untenable and void. There is no basis meeting the requirements of the regulations
9 for the staff approval of the Variance in the AR, as plaintiff has pointed out from the NOA to the present. The "whole of the
10 record" points to this and has been ignored in errors of judicial review, for it is manifestly clear error that sanctions breaking the
11 laws to any degree while stating supporting evidence overcomes.

12 The section on Claim 1 concludes with reciting Art(VI(j)(5) requirements concerning "independent judgment" on the
13 evidence noting, "the scope of review shall extend only to whether there was prejudicial abuse of discretion." Plaintiff discussed
14 the two-pronged standard on p. 1, above, and further notes the judicial review standard must be coupled with and informed by
15 the Compact's mandate to strictly follow the Compact law (Art.(c)), "The Tahoe Regional Planning Agency shall interpret and
16 administer its plans, ordinances, rules and regulations in accordance with the provision of this compact." Noting the use of
17 "shall" and that the provision does not allow that defendant can adopt or interpret its self-enacted regulations in a manner
18 inconsistent with the Compact, the court shall not grant defendant discretion it does not possess to pass and administer laws that
19 violate the statute, or to violate the regulations enacted, without committing a clear error of judicial activism and overreach
20 contrary to what Congress clearly intended. Yet that is what court has done based on "ample evidence in the record" to support
21 one prong of the test while ignoring the facts that the whole of the permitting and appeal process is fatally tainted by defendant's
22 illegal regulations, and faulty administration, with ample evidence in the record for that. The order's motion for summary
23 judgment on this claim fails as a matter of law.

24 B. Claim 2: "Late Response for Stay Request"

25 Court discusses the day-late determination in response to the stay request filed with the NOA, writing, "First, the court
26 agrees with defendant's assertion that this claim is moot because there is no available remedy with respect to TRPA's delayed
27 response." (OFR 15:2-3) The gloss echoing defendant continues, "... there is no further relief for the court to order." (OFR 15:4)
28 Plaintiff would say first that ROP 11.3 grants no discretion not to make a stay determination within two days, which must be

communicated to be of any validity unless a denial by inaction is intended. Second, plaintiff notes the fact that the response came on day three is not disputed (AR1182), and is therefore a single-day violation of the requirement. Third, this section calls into question whether the Reply was adjudged by the court in its entirety, thereby depriving plaintiff of a fair tribunal, as there is no mention of any of plaintiff's counterarguments or claims of violation and trespass of constitutionally protected interests under the ROP (Reply 7:10-14), another manifest constitutional error.

Fourth, court's finding of mootness is plainly erroneous, and ignores the fact that relief for *all* of the violations claimed in plaintiff's original Complaint and thereafter rests entirely on Art(VI)(I), "Any person who violates any provision of this compact or of any ordinance or regulation of the agency or of any condition of approval imposed by the agency is subject to a civil penalty not to exceed \$5,000 ... per day, for each day on which such a violation persists..." Here we have a willful violation by the defendant, for which plaintiff is still alleging bad faith—not only for being late, but for its illegal contents scheduling the hearing on September 28, 2022, in violation of ROP 11. Plaintiff would accept that \$5,000 is an adequate penalty, sufficient to deter such lateness in the future. The claim of mootness on the basis that no relief is available is a plain error that does not withstand legal scrutiny and plaintiff's claim must not be dismissed for lack of jurisdiction (OFR 15:6-7). If court does not believe civil liability is an available remedy, it must refute plaintiff's arguments and has not. (MSJ 17:10-19:11) Plaintiff is a person. TRPA is a person. Here the court is attempting to deprive plaintiff's right to equal treatment under the law (42 U.S.C. § 1985), namely, the right to obtain relief in the same manner as defendant does when it prosecutes violators, and thus dismissing this complaint on the stated bases is a manifest constitutional error that necessarily trespasses guaranteed civil rights.

Court errs further by not acknowledging the arguments put forward in the Reply at 13:10-16:11 identifying constitutionally protected interests created by the defendant's ROP, thus establishing factual constitutional violations. Court evidently did not fully consider the Reply before issuing the order, with a presentation clearly prejudicially biased to dismiss the case. Court repeats the error of claiming "plaintiff's appeal was heard and acted on," when as a matter of law plaintiff has explained *ad nauseam* the action taken by required BM vote was on a major Plan Revision approval, and had no legal validity to begin with under illegal regulations. (MSJ 16:12-24, Reply 2:16-25) The court goes on, without basis, to excuse the violation in plain error, with a fraudulent claim of "substantial compliance"—not with meeting the determination requirement in two days, but only for the elements of the stay determination that are within defendant's discretion, so-called interest balancing. (OFR 15:16-17)

C. Claim 3: "Advancement of the Appeal Hearing Date"

The contents of the stay determination are discussed (OFR 15:19) as court repeats defendant's blithe unsupported assertion

1 from their CMSJ, that “as explained above, there is no constitutional right arising from TRPA’s rules.” (OFR 15:22) That notion
2 was fully debunked in the Reply, as noted above, so this review begins in failure mode like the prior claim review. The order
3 continues, stating the ROP puts no limit on defendant’s appeal hearing scheduling, but does “impose certain deadlines on the
4 appellant.” This ridiculous claim was not addressed fully in the Reply only due to the limitations of space, and comes out of
5 defendant’s twisted view that the TRPA regulations are binding on the public and merely serve as advisory guidelines for what
6 defendant may do in its illicit, unbridled “discretion,” ignoring its charge under Art(I)(c). This statement evinced the minds
7 behind the tyrant to plaintiff, since that is defendant’s practice in actual fact.

8 Plaintiff completed additional analysis of ROP 11 in response to the order and will again summarize and extend the
9 findings and allegations ignored by court. There never was any legal basis in the Compact for ED or Hearings Officer (HO)
10 approval of projects or variances, and therefore no basis for appeals. (ROP 11.1) The whole section 11 is invalid, and set up to
11 deprive the public of protected civil rights and should be stricken from the regulations. The ED or HO acts beyond statutory
12 authority when taking action on projects in lieu of Board action under illegal delegations of project and variance approvals
13 defendant illegally made up. Nevertheless, defendant proceeded to violate its own illegal rules, as follows.

14 ROP 11.2 refers to notice of appeal (NOA) filing requirements, SOA filing requirements, and scheduling requirements for
15 being on the “next Governing Board agenda,” including SOA filing before the 15th of the previous month. Importantly, the
16 filing of the NOA and SOA puts the scheduling for the appeal hearing in the appellant’s hands. For defendant’s September 28,
17 2022 scheduling requirement to comply with 11.2 the SOA would have to have been filed by August 15, 2022, a week before
18 the NOA filing. Thus, defendant fatally erred in interpreting its scheduling rules in order to hold an appeal hearing timely for its
19 permittee, violating applicable regulatory requirements, nor does it have any discretion to violate the rules it enacted for itself.
20 (Art(I)(c)) The SOA was filed before September 15, 2022, under duress, as defendant had communicated its intention to
21 schedule the appeal at the September 28, 2022 meeting with repeated, unsupported, assertions of discretionary authority, as in its
22 CMSJ, thereby depriving the due process rights of the appellants.

23 ROP 11.3 concerns stay requirements, including the two-day determination I’ve previously discussed, something an
24 appellant “may request” and the Chair may issue following a determination. There is a reference to holding a hearing on the
25 appeal at its “next regular meeting.” To be consistent with 11.2’s requirement to publish the appeal in the “next Governing Board
26 agenda” the requirement to file the SOA on or before the 15th of the previous month must be recognized, with no other reference
27 to scheduling requirements in 11.3. Scheduling in any event depends on 11.2 requirements, and defendant erred fatally in
28 scheduling the appeal hearing to its “next regular meeting,” without any regard for 11.2 due process and scheduling requirements

(as reinforced by 11.4, below, including the “previous month” requirement). There is thus consistency with sections 11.2 and 11.4 which defendant and the court doubly ignored. Appeal scheduling requirements are completely independent of any stay issued, and it is an error of law to assert otherwise, as defendant’s General Counsel did repeatedly, and as court does in support. The AR contains the record of emails between plaintiff and defendant’s General Counsel demonstrating the pre-SOA, pre-appeal contentions of defendant under ROP 11.3, and duress plaintiff was arbitrarily compelled into, under strenuous objections: AR1182, AR1185-AR1205, AR1248, AR1251, AR1258, AR1259, AR1264-1267 and AR1280.

Review procedures for (illegal) decisions by the ED are in ROP 11.5, and most importantly limit appeal arguments and bases, repeating *verbatim* a sentence in 11.4. By rushing the appeal hearing from November 16 to September 28, 2022, defendant deprived plaintiff of the time needed to fully complete the SOA, and the time needed to prepare for the hearings before the Legal Review Committee and the Governing Board. Rather, critical time to prepare under the ROP’s contractually-guaranteed schedule was spent in time wasted arguing against defendant’s blatant rule-breaking and pushing back against a schedule *imposed* by defendant, first, to file “any additional information”(AR1182) on September 2, 2022 (which plaintiff refused), and then to file the SOA by September 8, 2022, with no authority or basis in law to do so!

Given the required time to file the SOA, plaintiff would have filed it after September 15, 2022, which would have put the appeal hearing on November 16, 2022. Thus, plaintiff was deprived of something on the order of ten days to prepare plaintiff’s SOA for filing, and an additional 56 days between September 12 (plaintiff’s SOA filing date) and November 16, 2022, to prepare for the appeal hearing. To add to plaintiff’s burdens in representing the co-appellants, Defendant issued its staff report for the appeal for comment one week prior to the meeting, on August 17, 2022. The appellant then has seven days to reply to the staff report (see 11.8 below) or be otherwise limited to the arguments and bases for appeal as stated in 11.5. Thus, the case for appeal was impossible to make fully in the time available, greatly trampling plaintiff’s civil rights and tainting subsequent litigation rights by severely limiting time for argument. Plaintiff sent comments on the TRPA staff report for the appeal on September 27, 2022 (AR1989-1994), in the midst of preparing for the above-cited hearings, preparation of presentations and slides for the hearings, and managing communicating with plaintiff’s associates, monitoring site activity, preparing exhibits such as plaintiff’s impervious coverage calculations and many other things. Within the limited time, introducing information to better explain the coverage analysis, introduce the *Daubert* standard, analyze the law, *etc.*, was not possible and deprived plaintiff of civil rights guaranteed under the regulations, illegal as they are.

It is patently unjust that defendant prejudicially abused discretion it does not possess in misapplying its own rules to compress the time needed for the due process requirements in ROP 11 to unfold. Instead, plaintiff was given an illegal and

arbitrary timeline, so defendant could illegally uphold its illegal project approval to advance project construction fully in 2022. All TRPA's Chair had to do was determine a stay would not be issued and let the appeal hearing process unfold. There was never any basis for a September 2022 appeal hearing as plaintiff was fully aware in lodging the appeal, nor any knowledge on plaintiff's part that defendant would attempt these illegal actions in bad faith—prior to receiving the information with the Chair's determination on the stay plaintiff received on August 25—when every day then became critical under the compressed schedule and caused great hardship in presenting plaintiff's case for the appeal. There was no “harmless error” in depriving plaintiff's due process rights as defendant claims in its narrow review of the day-late response containing the illegal scheduling requirements, which the court is supporting without justification; the agency simply has no discretion to violate the ministerial requirements, regardless of whether its staff supposes its errors are harmless.

“11.6.2. If the Board determines to hear the appeal, it may take action to modify or revoke the approval by the same affirmative vote as would have been required to approve the matter before the Board. Failure to take such action shall be deemed a denial of the appeal.” Plaintiff commented that the defendant failed to act on plaintiff's appeal of a variance by the vote required, instead substituting the vote required for a project approval. (MSJ 16:12-19, Reply 8:1-6). Therefore, the Board did not in fact act on plaintiff's appeal on the issuance of the variance. In hindsight, it was all a misguided sham, and reasonably may have turned out differently had defendant followed the rules—and not acted prejudicially in bad faith to deprive our civil rights from day three. In any case, the Variance was denied by the operation of law, setting the stage for this litigation.

“Prior to a hearing on an appeal, the Executive Director shall prepare a staff position paper on the appeal. The staff position paper and the written statement of appeal shall be mailed to the appellant and any real party-in-interest and included in the Board packet at least seven calendar days before the Board meeting that the appeal is scheduled to be heard.” (ROP 11.8) The staff position paper was only sent by limited electronic mailing in this case, which the above regulations do not support. It was not mailed to any other real-parties-in interest to plaintiff's knowledge based on the AR, which lacks any evidence of legal public noticing (Reply 8:15-20) such as to any nearby property owners, including a multi-unit condominium with private dwelling units within 300 feet of the project site. This public noticing requirement was unmet, depriving all such parties of their civil rights without them knowing. The court has committed manifest constitutional errors of law by excusing all such civil rights violations and there is no entitlement to summary judgment on Claim 3 for defendant as the court states.

D. Claim 4: “Requirements for a Complete Project Application”

Claim 4 concerns unmet, non-discretionary application requirements for a “major” project revision per fee regulations, contrary to statements in OFR 16:5-16. (See AR1294) The court opines that these are discretionary requirements and that a

1 “duplicative submission was not warranted.” Plaintiff disagrees that the required elements of ROP 5.2 for a complete application
2 are discretionary, though never implying the elements must be “duplicative” as to content. The requirement was to provide an
3 application appropriate to the Project as revised, and this defendant did not require prior to its staff approval of the Variance.
4 (Reply 5:3-5) This error of law the order supports at OFR16:18, citing defendant’s assertion that this claim constitutes a “third-
5 party cause of action” outside the court’s scope of review. Plaintiff refutes the assertion, with the defendant being in violation of
6 ROP 2.2.1 for approving a Variance in the absence of a complete application. Thus, this matter is within the scope of review as
7 addressed herein and contrary to court findings at OFR 16:19-20. Defendant is not entitled to summary judgment on this claim in
8 light of the errors of fact and law, above.

9 E. Claim 5: “Application Signer in Perjury”

10 The order cites a claim (16:23) that the application was unsigned which plaintiff ceded in the MSJ (10:8-9), and cites the
11 arguments against Claim 5 that fail for Claim 4 concerning the perjured, incomplete application, and this argument fails for the
12 reasons stated above. The order restates defendant’s admonition that “a challenge to the adequacy of the initial application is
13 outside the proper scope of the court’s review.” (16:26-28) That is precisely why the regulations (ROP 5.2) require a complete
14 project application that addresses potentially significant impacts and requirements, from the project as revised, to preserve
15 important environmental obligations and civil rights to public participation concerning those obligations. This is where defendant
16 failed, here supported by court. The AR evidence that the application was perjured is that it was incomplete in important respects,
17 which matters mainly for the reasons stated above—to ensure important civil rights under the project review processes.
18 Defendant is therefore not entitled to summary judgment on Claim 5.

19 F. Claim 6: “Incomplete Application: Missing Initial Environmental Checklist”

20 Claim 6 pertains to the missing Initial Environmental Checklist (IEC) required of all applicants for a complete application.
21 As with Claim 4 there is a false claim plaintiff is “creating a private right of action” from defendant’s ROP to “challenge the
22 contents of an application.” Again, this in error because plaintiff isn’t challenging the “contents” of any application element, only
23 that required elements were absent entirely, elements which are non-discretionary under ROP 5.2 when a project application is
24 triggered. The order’s case law cited is inapplicable (OFR 17:22-25) because there is no evidence of environmental review in the
25 AR, as discussed at AR0734-AR0736, MSJ 10:17-11:13, and Reply 5:6-7:9. Defendant violated ROP 5.2 by not requiring an
26 IEC and other missing elements. (AR2869) It gave preferred treatment for the applicant rather than equal treatment under the
27 laws. Approval of the Variance (not the “Plan Revision”) on the basis of no IEC was a prejudicial abuse of discretion and the
28 entitlement to summary judgment for the defendant recommended by the court fails for Claim 6 for the same basis as for Claim 4.

1 G. Claim 7: “No Environmental Review Determination”

2 The purpose of Claim 7 was to document the absence of environmental review by staff concerning the Variance, as
3 supported by the AR. (MSJ 10:7-11:13) The staff approval of the Variance (not the “Plan Revision”) was therefore a prejudicial
4 abuse of discretion and the entitlement to summary judgment for the defendant recommended by the court (OFR 18:12) fails for
5 this claim for the same reasons as for Claims 4 and 6.

6 H. Claim 8: “Incomplete Application: Missing Necessary Reports”

7 Claim 8 pertains to missing “necessary” reports for the Variance application for the Plan Revision, with a focus on the
8 revised geotechnical report. (OFR 18:6-9) With the court’s rejection of *Daubert* as a tool in this case, plaintiff points to additional
9 non-discretionary reports not provided at MSJ 10:4-7, and it is these violations that deprive defendant of entitlement to summary
10 judgment on this claim solely on the basis of “substantial evidence” (OFR 18:11), with the court erring by ignoring violations of
11 law and the absence of evidence of compliance.

12 I. Claim 9: “Prohibition of Excavation Interference with Ground Water Table”

13 Plaintiff’s SOA provided a detailed analysis for Claim 9 (AR1313-AR1319) to support that approving a variance to the
14 regulations was in violation of applicable requirements, as did plaintiff’s MSJ (14:1-17) and NOA (AR0737-AR0746). As for
15 Claim 1, the order cites a one-pronged judicial review standard to dismiss, without comment, defendant’s violations of law solely
16 on the basis of “substantial evidence” (OFR 18:11), with the court erring by ignoring violations of law. The defendant is not
17 entitled to summary judgment on this claim.

18 J. Claim 10: “Conflict of Interest Violations”

19 With regard to Claim 10, court cites defendant’s explanation from the CMSJ with the issue focused on the meaning of
20 “employee” stating of ROP 8.4, “this provision is designed to prevent employees from seeking supplemental employment or
21 compensation,” so defendant, “retained a third-party soils consultant (not as plaintiff asserts, a ‘subordinate employee’)...”
22 (OFR18:26-19:2) My World Book Dictionary (1983, p. 1782) indicates “retain” means “3. To employ by payment of a fee . . .
23 by payment of a retainer,” and the first meaning of “retainer” is “a person who serves someone of rank; vassal; attendant;
24 follower.” This supports plaintiff’s claim that the soil consultant is an “employee” of the defendant, and subordinate to it in
25 accordance with common understandings and therefore ROP 8.4 is applicable. Plaintiff stands on the MSAR’s analysis and
26 summary, in particular the finding that defendant does not have any person on its staff competent to carry out its ground water
27 protection regulations. (MSAR 13:23-14:8) Court errs in claiming the employee was not conflicted, and defendant is not entitled
28 to summary judgment on this claim.

1 K. Claim 11: “Impervious Coverage In Excess of Limitations”

2 Court will NOT exercise independent judgment on the coverage evidence, despite any discretion under case law or “bad
3 faith” it refuses to see, citing defendant analyses debunked in the MSJ and MSAR. The court finds, “Regardless. . .the court is
4 required to defer to TRPA’s calculations.” (OFR 19:18-19) There is court discretion under the circumstances, and the court is
5 perpetuating defendant’s coverage errors with an error of law by citing that discretion, however limited, is unavailable to the
6 court in light of the whole record. (Reply 11:16-12:19) Court here stands on maintaining strictest compliance with a review
7 standard, erring by contrast with all defendant’s violations of legal requirements court has *completely* ignored under the loosest
8 of interpretations, as discussed thus far herein. Thus, court is cherry-picking which laws to follow and how, just as does the
9 defendant, in an arbitrary and capricious denial of justice. Defendant is not entitled to summary judgment on this claim.

10 L. Claim 12: “Illegal Appeal Hearing Voting Procedure”

11 Court dismisses Claim 12 and the erroneous voting procedure as a harmless error because the outcome wouldn’t have
12 changed. (OFR 20:1) True, the outcome was predetermined under *any* voting procedure. This case took some extraordinary
13 turns in the final analysis, something likely unusual in most administrative law cases, with plaintiff’s disclosure that defendant
14 has operated under invalid regulations in its Code of Ordinances and Rules of Procedure, since 1998 as it turns out, to excuse the
15 Governing Board from voting on the vast majority of projects and variance applications before the agency in a manner contrary
16 to law. (Reply 3:5-20) This raises Constitutional issues with regard to civil rights violations because defendant has done
17 indirectly what the U.S. Congress and the two states could not do directly, by its changing the statutory requirements with faulty
18 regulatory rules that deprive the public of its protected rights to due process and public participation in agency decision-making.
19 (*Henderson v. Mayor of the City of New York*) .The vote on plaintiff’s appeal, however erroneous in process (AR2867), was a
20 foregone conclusion as plaintiff’s Reply and other motions makes plain. The illegal voting led to discovery of all the illegal
21 regulations the court is looking past throughout the order in manifest constitutional error, without a word that defendant has acted
22 contrary to law in any respect. (Reply 1-2) The defendant is not entitled to summary judgment on Claim 12.

23 **VII. Conclusion**

24 Court has in essence said the quiet part out loud. It believes defendant may facilitate rampant development in violation of
25 its mandate to protect the Tahoe region, violate its own regulations and the Compact with impunity, violate the civil rights of the
26 people, ignore science and public safety and health data, and that courts can’t hold it accountable. In defendant’s wildest fantasy,
27 nearly nobody has interest or standing to sue or is harmed by its procedural due process violations. Court makes precedent
28 establishing that defendant is accountable to nobody, even if it harms federally endangered species, introduces or micoplastic

1 pollutants into outstanding federal waters, or irradiates people, natural waters, fauna and flora with damaging effects. Defendant
2 won't take any look whatsoever, let alone a 'hard look,' at the multiple adverse consequences and viable alternatives to its
3 projects, with court assenting.

4 To these precedents add court's recommended consent to allow, without a contrary word, that defendant may change the
5 laws set forth by the U.S. Congress and the state legislatures of California and Nevada, that defendant may further ignore even
6 those inapplicable illegal requirements under presumed discretion that does not exist to violate the law, with court denying for
7 defendant that any violation of law or "bad faith" has occurred without specific reference to mountains of evidence. This order
8 abets defendant to destroy the purity of the enormous and world-class water resource that is Lake Tahoe for healthful drinking
9 water purposes, to destroy the natural environment of Lake Tahoe with toxic man-made chemicals and microwaves, and to
10 degrade Lake Tahoe for all other beneficial uses of water protected under the California Water Code in the absence of currently
11 prohibitively-expensive treatment without a scintilla of precaution, a program the MJ is in full support of. I therefore pray for
12 court's reversal of the order, findings and recommendations by the MJ, and to order summary judgment for plaintiff. Court must
13 assist to restore Lake Tahoe by restoring the rule of law.

14 

15 DATED: November 22, 2023

16 Alan Miller, *Plaintiff, in propria persona*

17 P. O. Box 7526, South Lake Tahoe CA 96158

18 Syngineer1@gmail.com
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Exhibit 1: Court Holidays, District Court for Eastern District of California

Monday, December 25

Christmas Day



1 John L. Marshall (#145570)
2 General Counsel
3 Tahoe Regional Planning Agency
4 P.O. Box 5310
5 Stateline NV 89449-5310
6
7

8 Executed on: November 22, 2023

Signature: 

9 Alan Miller

10 *Plaintiff, in propria persona*
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