BEFORE THE SOUTH LAKE TAHOE CITY COUNCIL

In re: CONSIDERATION OF A SPECIAL USE PERMIT AND CALIFORNIA ENVIRONMENTAL QUALITY ACT CATEGORICAL EXEMPTION FOR TRPA MULTI-FAMILY DWELLING PROJECT APPLICATION – 3900 & 3908 LAKE TAHOE BOULEVARD AFFORDABLE HOUSING PROJECT, APNS 029-170-001 & 029-170-002, FILE #24-173	**)**

NOTICE OF APPEAL OF PLANNING COMMISSION DECISION

This appeal stems wholly as an outcome of the Tahoe Regional Planning Agency's abandonment of the public trust by decades of failing to honor the spirit and letter of the Tahoe Regional Planning Compact. TRPA is a rogue agency, out of control, mismanaging Lake Tahoe and the Tahoe region under illegal regulations. I am simply a messenger concerning the situation involving the City.

Notice of Appeal

This is a most formal Appeal from the April 17, 2025 Planning Commission decision on Item #2: Consideration of a Special Use Permit and California Environmental Quality Act Categorical Exemption for a TRPA Multi-Family Dwelling Project Application - 3900 & 3908 Lake Tahoe Boulevard Affordable Housing Project, APNs 029-170-001 & 029-170-002, File #24-173.

Appeal Conforms to City Code

This "Notice of Appeal" contains the contents pursuant to SLTCC § 2.35.030, and hence is in an acceptable format. The action is appealable per SLTCC § 2.35.070 (Table 2.35.070—"Use Permit and Variances"), and per the terms of the "DESIGN REVIEW AND SPECIAL USE PERMIT, File #24-173." The Planning Commission decision occurred on April 17, 2025; pursuant to SLTCC § 2.35.020.A, the Appeal having been submitted within 15 days—the legal deadline being Friday, May 2, 2025—is accordingly timely. Notwithstanding, California Government Code §§ 37100 & 65904 require the South Lake Tahoe City Council to hear this appeal.

Jurisdiction for Appeal

Pursuant to TRPA Rules of Procedure, the TRPA Governing Board does not have jurisdiction to hear a direct appeal of any City Planning Commission decision—nor were all of the participants in the Planning Commission hearing given requisite notice of appeal rights as would have been required by the actual TRPA hearing's officer (Rules of Procedure § 14.6).

Notwithstanding, the TRPA Governing Board is not an appeal board created and answerable to the City Council as required by California Government Code §§ 65900 & 65903. Unlike the City Council, the unelected TRPA Governing Board is not accountable to City residents (Elections Code § 201). City residents may only vote for two of the Board Members—a City Council person and an El Dorado County Supervisor—and most of the Board is entirely unelected.

No TRPA Governing Board member is elected to their position. Rather, some elected members are appointed to serve TRPA from the jurisdictions they were elected in. This situation raises grave constitutional doubts of direct ability to appeal City planning decisions to the TRPA; this issue has historically been avoided by having two separate siloed processes work in parallel. TRPA is not an authority over the City of South Lake Tahoe's City Code and body of ordinances not codified by TRPA, and likewise the City is not an authority over the TRPA Code of Ordinances. This latter lack of authority and expertise is demonstrated by a misconception held by some City officials that the TRPA Governing Board has jurisdiction to hear appeals not expressly conferred as a matter of right in the TRPA Rules of Procedure. There simply is no legal possibility here for that; the Constitution's due process and equal protection clauses prohibit such.

The right to appeal to the City Council cannot be nullified by a Memorandum of Understanding ("MOU") or other resolution. MOUs at best are approved by the City Council as resolutions, not as ordinances. There is scant documentation for approval of the MOU with TRPA, basically a staff recommendation at a public hearing. Where was the City's legal counsel? The City Code contains the acronym "M.O.U." only one time, without even defining what that abbreviation means, let alone that it means taking on TRPA's entire core permitting activity in the City for TRPA under the MOU provisions the City signed up for.

In any case, there is a vast difference between an ordinance and a resolution and/or MOU. Ordinances are "legislative rules" which carry the force of law, and resolutions are generally "interpretive rules" which govern internal affairs or extol non-binding policies or goals. As such, resolutions do not have the same high degree of due process protections as required for ordinances because they are not supposed to externally affect public liberty and/or property rights. Resolutions do not have to be published in the legal notice section of the local newspaper or read multiple times at City Council meetings, or be passed only during regular meetings, or have a general 30-day delay in taking-effect as compared to ordinances (Government Code §§ 36931 - 36937). The degree of process that is constitutionally "due" is commensurate with the

severity of liberty or property interest at stake (e.g., Mathews v. Eldridge, 424 U.S. 319, 334 (1976); People v. Ramirez, 25 Cal.3d 260, 268-69 (1979)). Due process is particularly compelling for land use decisions (see, Horn v. County of Ventura, 24 Cal.3d 605, 616 (1979); Scott v. City of Indian Wells, 6 Cal.3d 541, 549 (1972); Drum v. Fresno County Dept. of Public Works, 144 Cal.App.3d 777, 783 (1983)).

This is one reason resolutions are constitutionally prohibited from being used to promulgate procedural rights of the general public. Likewise, a city may not pass an ordinance which adopts-by-reference whatever dynamic contents are in certain city resolutions such as MOUs to circumvent constitutional due process and statutory requirements for making and modifying ordinances—basically an ordinance dressed-up and passed as resolution, or MOU in this case (Government Code § 37100).

The opportunity to write and come as an appellant before the City Council in the public forum to testify about the illegal conduct of its subordinate appointees and staff is therefore codified, with no legal basis for denial. Were city officers to violate the city ordinance promulgating appellant's right to appeal to the City Council, they will have committed a misdemeanor (Government Code § 36900).

Grounds for Appeal

Pursuant to SLTCC § 2.35.030, the "Grounds for Appeal" include, but are not limited to, the following:

(1) The agenda for the public meeting at which the approval took place was not properly noticed;

(2) The MOU facilitating the approval of this development is unlawful and was adopted without findings to satisfy environmental review requirements pursuant to the California Environmental Quality Act (Cal. Public Resources Code 21000, et seq);

(3) The initial environmental checklist review of the project is deficient and glosses over significant effects on the environment;

(4) The project violates multiple City requirements and polices which were unaddressed and ignored by the City staff report of April 17, 2025 for the project;

(5) The project approval violates state law and exceeds City authority under law; and

(6) Emailed public comments on the project to the Planning Commission, timely provided, were administered as "junk" email, and were not provided to the Planning Commission, posted to the City's website, or considered by the Planning Commission, with portions improperly excluded from the public record for the action.

Procedural Considerations

Per City Council Protocol § V(1)(b)(iv), Public Comment is three minutes per speaker. Per City Council Protocol § V(1)(c), the Mayor shall conduct the appeal in such a manner as to afford due process to the appellant, generally with 10 minutes to present testimony and five minutes to rebut testimony. Per City Council Protocol § V(1)(d), if issues are raised during the appeal hearing that cannot be immediately responded to by Staff, the hearing should be continued to have such information available for the appeal process. However, City Council Protocol § IV(9) providing that "rules may be waived by two-thirds (2/3) vote of the Council members" forgoing to § IV does not and—as a higher matter of law—cannot apply to the latter § V protocol pertaining to appeals—which are a quasi-judicial hearing. See e.g., Woody's Group, Inc. v. City of Newport Beach, 233 Cal.App.4th 1012 (2015) (noting that a city council "cannot change the rules in the middle of the game"); cf. Petrovich Development Company, LLC v. City of Sacramento, 48 Cal.App.5th 963 (2020)(holding that hearing and deciding an appeal of a conditional use permit is one of the times that a city council acts in a quasi-adjudicatory capacity—similar to judges). The City Council must also apply the Maxims of Jurisprudence (CA. Civ. Code §§ 3509 – 3548), and should be provided them to study in advance.

The City must quasi-judicially hear the appeal *de novo*, following SLTCC § 6.75.080, and decide the facts for itself based on the record. I believe the errors are plain. The City must recuse City Council members with divided loyalties, or they should recuse themselves. Mr. Bass currently serves as an appointed TRPA Governing Board member while concurrently serving as an elected City Council member; other City Council members may serve as an "alternate" for the TRPA appointee from the City in case of absence. California's conflict of interest statutes are based on the belief that a public official cannot serve two masters simultaneously and that the duties of public office demand the absolute loyalty and undivided, uncompromised allegiance of the individual to the office held. The MOU as written, which the City is now so heavily invested in, appears to set that service and loyalty at odds here, tipping the deference scale heavily in the direction of TRPA and its fraudulent MOU, while the City Council members are elected only to serve the people. See People v. Honig, 48 Cal.App.4th 289 (1996); Thomson v. Call, 38 Cal.3d 633 (1985). See also Stockton Plumbing & Supply Co. v. Wheeler, 68 Cal.App. 592 (1924); President and Trustees of City of San Diego v. San Diego and Los Angeles R. Co., 44 Cal. 106 (1872). Notwithstanding, the appearances of a conflict of interest violate the common law "appearance of fairness doctrine," and are enough to mandate recusal. Petrovich Development Company, LLC v. City of Sacramento, 48 Cal.App.5th 963 (2020) (holding "the law does not require the disappointed conditional use permit applicant to prove actual bias; rather, there must not be an unacceptable probability of actual bias on the part of a municipal decision maker").

STATEMENT OF APPEAL

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Exhibits:

1. July 2015 City-TRPA Memorandum of Understanding
2. March 2015 Notice of Liability to TRPA/Petition to Redress Grievances
3. April 17, 2025 Staff Report to Planning Commission
4. June 17, 2014 City Staff Report on MOU
5. July 15, 2015 City Staff Report for MOU adoption
6. July 15, 2015 City Council Meeting Minutes
7. April 2025 email from City Clerk re Public Records Administration
8. April 17, 2025 Carthan email to City, Public Interest Comments
9. April 21, 2025 Carthan email to TRPA, Public Interest Comments
10. April 22, 2025 Tahoe Clean Air comment letter to TRPA re Wildfire Evacuation Planning

I am Alan Miller, civil and environmental engineer, a long-time resident of the City of South Lake Tahoe, appealing the April 17, 2025 decision of the Planning Commission to approve the above-cited Project and the City's issuance of a construction permit for the Project cited as a legal instrument of the Tahoe Regional Planning Agency, a "TRPA Permit" on TRPA letterhead and in the format specified by TRPA. This approval action was taken under the purported authority granted by the TRPA and possessed by City pursuant to a 2015 Memorandum of Understanding (MOU) jointly executed by Joanne Marchetta for TRPA and City Manager Nancy Kerry for the City. (Exhibit 1)

The Project Approval

The approval followed a presentation by the applicant and no discussion of lengthy written comments and attachments I sent to City by email. One person other than the applicant, a former City Council member, testified in support of the project. Concerns were voiced by Commissioner Williams about public safety, like people/bikes being run over with car ingress and egress from onsite project parking across a busy sidewalk and street and the safety matters were, by their approval action, "not significant" though left unresolved. I didn't appear to testify, figuring my written comments would suffice, and reviewed video of the meeting. Only later did I discover my written comments had been treated as junk in the City's email system and not provided to the Planning Commission. The gist of my comments was that the City-TRPA MOU is legally invalid, the MOU does NOT uphold the federal Tahoe Regional Planning Act, the City has no legal authority to act in TRPA's stead, and therefore City approval under the MOU of findings required of TRPA under the TRPA's Code of Ordinances, and approval and implementation of the cited "TRPA Permit," should be denied, essentially without prejudice. To do otherwise and approve the Project would be acting without authority under color of law, a very serious matter involving fraud and misfeasance, in view of applicable law. Again, approval was unanimous.

TRPA's Role

The Applicant is compelled to apply to TRPA for a TRPA Permit for activity that is not exempt from TRPA environmental review and permitting requirements pursuant to Compact requirements. That is a fact despite all contrary website guidance, regulations, and/or MOU interpretations in the public sphere. These requirements are detailed in the Petition I filed with TRPA dated March 25, 2025, and which is hereby incorporated in its entirety as Exhibit 2. This is the primary public record I provided in this matter which was discarded by public records mismanagement I will detail later.

The TRPA Governing Board is charged to approve environmental reviews and permits for projects that are not designated exempt in its regulations (Compact Art. VI(b)). Among other things, I suggested the Planning Commission should not issue a fraudulent approval and "TRPA Permit" and to defer and refer the matter to TRPA. As noted in the Planning Commission's staff report for the project (Exhibit 3), the Project is exempt from CEQA. CEQA is the only

environmental law the City has authority to implement as required for a City Building Permit or other development right under authorities in the City Code of Ordinances, not the TRPA Code of Ordinances.

MOU Background and Issues

Despite the above, I expect the City will cite the MOU and its provisions that such an appeal is proper before the TRPA, not the City Council, blindly following TRPA guidance. If you have read my comments above and Petition you will already know that I disagree vehemently on firm legal grounds. As I wrote in my Petition and comments to the Planning Commission, I honor the TRPA Compact adopted by Congress but not the faulty and illegal regulations adopted by TRPA. As discussed in my Petition, many parts of those regulations are without effect, NULL and VOID in my expert opinion, and not binding on anyone; TRPA appeals are illegal.

I don't dispute that the TRPA can enter into MOUs with other agencies: What I dispute here is that it can essentially delegate its Governing Board's regulatory planning, environmental review and permitting role to the City or any other agency, and turn the City into a low-paid servant of the TRPA at taxpayer expense. I do not honor those MOU provisions. Besides that, the MOU and TRPA's regulatory requirements are not enacted in City Code (other than by reference, mainly design standards) so, while the City can apply relevant design standards of TRPA, the City has no legal authority for approving and implementing "TRPA permits" pursuant to law. It's all a very clever ruse as far as the unsuspecting public like me are concerned, and whether the fraud has gone unnoticed or unchallenged until now is irrelevant to applicable law.

Analysis of the City-TRPA MOU

The MOU (Exhibit 1) identifies the parties and cites Article VI(m) of the TRPA Planning Compact (Public Law 96-551) and § 2.5 and § 13.7 of the TRPA Code of Ordinances as its basis in law and regulation, respectively. The cited Article presently states: "(m) The agency [TRPA] is hereby empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by State or Federal law."

The key part above is "agreements authorized by State or Federal law." This MOU is authorized on the TRPA side, the Compact being federal law. But note that it doesn't say TRPA can delegate actions that require voting by the Governing Board. This MOU is not authorized in State law, is not binding on the City for that reason, which is why I wrote the City is acting without authority under the MOU in my junked comments. Article 8 of the California Constitution provides that "(a) The Legislature may provide that counties perform municipal functions at the request of cities within them." There is no counterpart in California law allowing that municipalities can perform federal municipal functions (as TRPA is charged to implement) at the request of the federal jurisdictions containing the municipality. Such actions are without legal basis, and that is exactly what the MOU purports to do.

As much as TRPA would like to think it can delegate its deficient environmental review programs to the City, it can't do that for the reasons discussed at length in my Petition, the primary subject of which is laying bare the many TRPA violations of the Compact. The chief trespass is that TRPA can't delegate matters to its staff, or any other person or agency, where a voting procedure is required by the Governing Board for legal approval. Putting land use planning and permit approvals in the hands of City officers is one more step removed from the required voting procedures, one more step removed from public accountability with respect to officers of the TPRA, none of whom are elected to their positions; they are appointed to serve TRPA from the various jurisdictions and include persons elected to positions in their jurisdictions such as Mr. Bass, as well as others elected to nothing. The facts are that the Governing Board has thwarted the Congressional project-approval voting requirements and there is no plausible reading of Compact Article VI(m) that extends the agency powers to violate Compact Article I(c): "The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provision of this compact." TRPA has violated the restriction to the detriment of the people and the environment, and has implicated the City in the violations through the fraudulent MOU.

The Code of Ordinances § 2.5 states: "Activities delegated to a Local Government pursuant to a memorandum of understanding (MOU) shall be reviewed and approved by a local government in accordance with the TRPA Regional Plan and this Code shall therefore be exempt from separate TRPA review and approval." This makes no sense as written, implying "this Code shall therefore be exempt from separate TRPA review and approval." I understand the intent, that TRPA will not be involved in the project review and approval processes, so TRPA asserts in its Code that the City "shall" do the project "review and approval" work only its Governing Board is authorized to approve under the Compact. This is a partially fee-funded optional federal program requiring local governments to pay the costs of implementing TRPA's regulatory land use and permitting program if they agree.

But the City didn't bother to inform the people in adopting the MOU, which is not in City Code. In this case review and approval costs are partially—not fully—offset by permit/development application fees, so the taxpayers must be absorbing the excess costs. It's not hard to understand why TRPA enacted illegal regulations to clone itself and push its permitting costs and associated issues (compliance monitoring, enforcement, etc.) onto the City through the MOU. The goal may be to reduce work required under the Compact TRPA deems duplicative of local government, but each has its own requirements to implement, or they must be harmonized in accordance with State and Federal law, unlike the current MOU.

Code of Ordinances § 13.7 specifies TRPA procedures for adopting MOUs,

> § 13.7.1. Memorandum of Understanding (MOU) Required

> After TRPA finds that an Area Plan is in conformance with the Regional Plan, TRPA and the lead agency shall enter into a Memorandum of Understanding (MOU) that clearly specifies the extent to which the activities within the Area Plan are delegated or exempt from TRPA review and approval, and describes all procedures and responsibilities to ensure effective implementation of the Area Plan. . .

Again, we have TRPA use of "shall" in its regulations to direct the City to assume TRPA's forgotten mandates to the extent "the activities within the Area Plan are delegated or exempt from TRPA review and approval," with the implied or explicit TRPA mandate that local government "shall" have procedures in place to do the work mandated of TRPA and its governing Board alone, pursuant to the Compact, if they want the development incentives and allowances for Area Plans under faulty TRPA regulations.

There are no provisions for Area Plans in the Compact. Examining the Area Plan provisions TRPA put into its regulations is relevant to this Project approval only to the extent that City staff was tasked under the MOU to carry out project approvals in portions of the City with an approved Area Plan. Code § 13.4.1. indicates Area Plans are optional, with the default being that the jurisdiction must follow the Code of Ordinances, generally, in the absence of a TRPA-approved Area Plan. The greater portions of Code Chapter 13 describe requirements that are to be contained in approved Area Plans and related matters. Suffice to write here the City satisfied TRPA's optional requirements and developed an Area Plan encompassing the Project area which led to the MOU at the heart of this appeal.

Part 1 of the MOU indicates either party can terminate the MOU with 60 days notice, and that the MOU is in effect until terminated. The MOU's substantive procedural portions are in attachments: B. relating to TRPA delegations in parts of the City with approved TRPA Area Plans, and C. TRPA delegations City-wide. My Petition to TRPA did not discuss provisions for Area Plans in the TRPA Code of Ordinances or evaluate them with regard to Compact requirements, mainly to limit the length, and similarly had little analyses of the MOUs TRPA has established. However, the Petition analyses are related directly to the MOU in that the deficient environmental review procedures are therein identified, and fraudulent exemptions from same, precisely the regulations and procedures that TRPA has mandated the City to follow and thereby usurp the Compact and constitutionally-protected citizen rights.

On that basis, the grievances discussed with the City-TRPA MOU can only be resolved if and when TRPA first corrects its faulty regulations in violation of the Compact. The City is encouraged to terminate or revise the MOU in the meantime to eliminate Project environmental document preparation and permit approvals under TRPA's Code of Ordinances pursuant to the MOU. The City must not exceed its legal authority and must abide within state law requirements. Therefore, I respectfully request that the City approval and "TRPA Permit" must be revoked.

The MOU was Adopted by City with No CEQA Finding

So the question arises: How did the MOU come to be back in 2015? As mentioned, after the TRPA amended its regulations to include Area Plans, the City got busy and had a number of them approved by TRPA, and was then saddled with the MOU requirements. The agencies worked to consolidate a handful of prior joint MOUs into the current MOU. On December 17, 2014 the TRPA staff promoted a Finding of No Significant Effect (FONZE) under its illegal environmental review rules and the Governing Board voted to approve the MOU, which the City had not signed. Note that TRPA at least recognized the potential for significant effects on the environment in that the MOU authorizes substantial delegated permitting activity by others that could significantly affect the environment, and thus MOU adoption is not designated as exempt from TRPA review and approval regulations.

The City Council received staff reports at the June 17 and July 15, 2014, City Council meetings (Exhibits 4 and 5) in which the TRPA-City MOU was discussed. There was notable concern with costs and staffing to absorb additional TRPA workload (e.g., issuing TRPA permits pursuant to the complex TRPA Code, reporting to TRPA on MOU implementation, and overseeing the TRPA permits). The Council, still noting concerns with absorbing TRPA workload, nonetheless approved the MOU at their July 15 meeting after a short hearing (see attached July 15, 2014 Minutes, Exhibit 6).

Even though TRPA conducted an environmental review for the MOU, which City staff was surely aware of, the City did not conduct an environmental review as required under CEQA. The MOU is a "project" as defined by CEQA and was not recognized as such by the City. Such review was legally required, minimally with a finding of Categorical Exemption, but potentially some other form of certification such as a Negative Declaration and public disclosure. Public funds were being committed under the MOU. Major City regulatory programs were being initiated under the MOU. Where was consideration of law? Where was the City attorney? How many other CEQA "projects" are illegally processed and get no CEQA certification in the City? This is more evidence that the MOU is legally deficient and additional grounds to uphold the appeal.

This Appeal is a Petition to Redress Systemic Grievances under the MOU

This is not an appeal of the ordinary sort, to protest the merits of the project and discretionary approvals based on substantial evidence, etc. I will include some such analysis here, but I generally have not found that to be productive or convincing to decision-makers in light of the way public agencies at Tahoe operate in fact. They have *their* own agendas and break or work the laws to achieve their ends, whereas I am concerned with fidelity to law and due process. This project has planning deficiencies, even under the deficient regulations.

I am not against affordable housing in the City and it is the applicant's misfortune to be caught in a legal dispute it is only a party to by following agency dictates. However, in light of my recent Petition filed with TRPA, I do not believe the December 2023 policy amendments to the Tahoe

Regional Plan that promote increasing urbanization in "town centers," adopted by TRPA in the absence of a required environmental impact statement and sprung on the public during the Christmas holiday season with seven days to comment and testify is the answer to Tahoe's housing woes. Others are welcome to disagree.

Here is my view of the MOU. The TRPA has its 2012 Regional Plan, as amended literally hundreds of times in the last decade, which overlies the City's General Plan. The TRPA came to the City after passing its Area Plan amendments, not with an environmental impact report, but under their egregious planning regulations that usurp the Compact. The City naturally wants to harmonize its design standards and requirements with TRPA's, as referenced in the Code, to facilitate project reviews and City permitting requirements. Here follows an imaginary conversation between Joanne Marchetta (JM) and John Marshall (JM), the two attorneys running the TRPA at the time, discussing the approach to the City regarding the MOU.

> JM: "Now that the Area Plan amendments are passed we've got to lean on these local governments to develop Area Plans and get those *delegation* MOUs in place. If this goes as we hope there is going to be a lot new development in our region's urbanized centers, multi-family, commercial, mixed-uses plus tourism and transportation. We can't keep up with the permitting now, we don't have the staff!" JM: "Yeah, we've already got the locals pulling a lot of our permitting weight under existing MOUs, so we're going to have to sell this thing, the extra work involved. We're going to have to tell them project approvals in their jurisdiction will slow to a crawl under our permitting requirements and staff limitations without their help. It's pretty complex, after all. We'll say they can keep the permit wheels turning if we can enlist their aid. They want that." JM: "All we have to do is convince them to go for the development incentives that could come after they do the Area Planning and MOU adoption work. The increased density, coverage and height allowances, etc., are our selling points. They are planners, so that convincing will be easy." JM: "Then we can soft-pedal the MOUs, tell them, hey, since they wanted the incentives they have to do the permitting work. We just have to *overlook* it. They have six months. That's our regulations. We can give them checklists and guidance to make *our* findings. They can even issue and enforce *our* TRPA permits! We'll tell them what to do, and how, but they'll feel in control. We should be able to shed most of *our* work that way." JM: "We could give them a little funding incentive, too, part of the permit fees that would go to us. We'll tell them we'll handle the appeals if controversies arise. That's no problem." JM: "That will free us up to do more Code amendments to grow our regulations while they do most of *our* permitting and oversight work, work we could never manage." JM: "Sounds good, let's do it."

Law and Due Process Rights Matter

I really don't come in principle as an adversary to the City or the project. I could be wrong, but I doubt any public servant involved here came to their position or this matter to intentionally break the law and deprive citizens of civil rights, just as TRPA does. I see the City staff and appointees

as well-intentioned, even if misinformed. Why persist then with regulatory folly in the light of information in my Petition, the many self-evident truths pointed out, not opinions. Two wrongs never make a right. I come to inform and advise, not damn. I'm not offering legal advice in simply pointing out the laws. I am nonetheless well aware of past City corruption and misfeasance (e.g., actions and inactions re monopine wireless macrotowers and microplastics). I really have to wonder what kind of legal advice you are getting from the City attorney(s) in such matters as the MOU. Or is TRPA the self-interested legal advisor here?

Should I be faulted for pointing out the legal inadequacies of the agencies which now accrue to the detriment of the applicant and the community and Tahoe region? No; the applicant and public is being shafted with only the agencies to blame because I've been petitioning TRPA *for years*, in court and in the public record, to clean up its act and end the illegal charades. All else is TRPA propaganda and misdirection. TRPA is a two-faced criminal racketeer-agency; it fits the general legal characteristics. Mainly, I want TRPA to comply with the Compact. Then maybe they would stop poisoning Lake Tahoe with toxic microplastics in support of recreational boating for the few, and address wildfire and evacuation issues in its planning regulations, both of which it refuses to do.

I suggest the Applicant must apply to TRPA for a development permit because the MOU with the City is legal garbage. Insist that TRPA process your project application under statute law and outside the MOU to move your project forward. By law this project requires a TRPA environmental impact statement of some sort. TRPA will process your application if they want the project more than they want the fraudulent and therefore non-binding MOU with the City to impede the project. The City hearing is invalidated. TRPA needs to conduct its own hearing.

If the appeal is denied, it is not a difficult matter for me to file a lawsuit with the City, in which case, win, lose or draw, the project is likely over. The facts are on my side, as is time. Again, I blame TRPA for running a calculated risk that its illegalities, which I've testified against many, many times, won't come back to bite their permit applicants and thwart their plans for the region, those they've shoved down our throats in TRPA's ongoing Operation Ignore Everyone who detracts from their actions and inactions. Except for MOU "partners," that is, who seldom push back. The City must push back on this MOU.

City Must Cease Breaking the Law

The far more serious basis for this appeal than the TRPA illegalities is that the City staff and appointees under your charge have acted in absolute violation of State law and the authority provided in the City Code of Ordinances. It is up to the City Council to put things right. I know most people do not have my regulatory background and these issues are perhaps esoteric matters with overwhelming "details" of little interest to lay decision-makers to take the time to understand. I know the general public will understand far less and has been propagandized by TRPA. I assure you the issues are understandable based on my sorting out of the regulations, and

you are elected and charged to grapple with such issues. I believe the lawyers have exploited this limitation in understanding, particularly prior TRPA lawyers, to the detriment of the City, the environment and the public the servants are charged to serve. It's either that or intentional, negligent law-breaking that is occurring. I've seen both. While the circumstances here are so legally bizarre as to boggle the mind, they are like water to the fish, accepted as a part of the Tahoe planning/regulatory environment without any actual awareness of the waters you are in, the Tahoe swamp, growing murkier under TRPA's watch.

On the basis of the foregoing, my appeal fees are paid by check in protest. I shouldn't have to pay to interrupt *illegal activities* by my City government, which I do as a service to the public which you are charged to serve. Perpetuating such illegal activity is an abuse of the power of the state under color of law. If the City wants to follow the law and rescind the Project approval without an appeal hearing and refund my appeal fee that would be fine, too. I suggest the Council not "double-down" on the errors of the Planning Commission after the cost and trouble of an appeal and thereby invite repeats of this appeal for other projects, or litigation that could be costly when you have no case, as here.

What I don't consent to is the City servants going out on a legal limb of any kind for the TRPA to the potential detriment of the citizen taxpayers! TRPA is the BIGGEST fraud. There are enough problems in this City without taking on needlessly defending TRPA fraud and committing your own, at cost and potential legal risk to the City taxpayers. Even if you think that risk is low, the City is nonetheless charged to follow the law, not gamble on legal risks for a "partner" agency under illegal MOU provisions. That choice is for poor if not tyrannical government and, again, I do not consent. TRPA has to come up with other ways to meet its obligations, legal ways that do not usurp Governing Board authority and deprive the public of guaranteed constitutional rights, and the City can't do that for it.

Illegal Delegations of Illegal Delegations of Governing Board Authority

My career experience with the Lahontan Water Quality Board may be informative because the same Constitutions and similar statute laws apply to the City. The CA Water Code sets very specific limits on what can't be delegated to its Executive staff; issuing or modifying "waste discharge requirements" is one example among others. Therefore as staff I was made keenly aware that I was not at liberty to make changes to duly-adopted requirements of the governing body, make up my own requirements, or otherwise usurp Board authority. TRPA is under the same limitation in the Compact, though perhaps less explicit, and its governing body and staff (as advised by staff attorneys) illegally abused that. TRPA doesn't honor the Compact and hasn't for decades. It was under these circumstances that I lodged my Petition to TRPA.

Think of it this way: The City Council can't delegate its voting authority for project approvals to the City Manager in every case except when an Environmental Impact Report is required under CEQA. What we have with the TRPA regulations is an illegal delegation of Compact authority

by the governing body to TRPA staff and, with the MOU, a further illegal sub-delegation by unbridled TRPA staff of Compact authority to the City. There are no such delegable authorities. The City clearly has no authority under the federal laws of TRPA. In my experience I also found three general types of entities: those willing to comply with the spirit and letter of the law; those who would minimally comply with the letter of the law; and those who would skirt the requirements, sometimes outrageously as here, generally with a fraudulent and inadequate defense when caught in the act. TRPA behaves as the latter.

This fraudulent MOU program has to end or the current City leaders will self-identify as scofflaws like the TRPA has. I certainly hope not, but I see here the City is a TRPA "wannabe" with the MOU despite no basis or authority in law, under bogus TRPA regulations. City Council member Bass is certainly not learning about these matters for the first time; I've been writing and testifying to TRPA about these issues for years while they continue their scams. Mr. Bass has been supportive at times; maybe he can't change the 15-member TRPA Board but the City duties to the public are another matter squarely in his domain.

Very Deficient City Public Records Administration

Pursuant to the California Public Records Act the public has a right to expect that public records represent "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Government Code § 7920.545.) The public also has a right to expect public records, including emailed comments and attachments, will be treated as such. However, the City treats emailed public records with nearly absolute disregard, discarding them from the public records.

The City Clerk has informed me that public comments provided to the City's email address publiccomment@cityofslt.us as instructed with each agenda announcement, as email with attachments, are forwarded to the Planning Commission (i.e., in this case) with the attachments, which can be read or downloaded by the individuals. For the public record, the Clerk then files a printed copy of any email received, excluding any attachments, for public review at a meeting. Any *actual* public records provided as attachments to email are then simply discarded from the *official* public records maintained and provided in response to requests for public records. All of this is in dismal disregard for requirements under the California Public Records Act. I suspect printing attachments for the record is simply just too much bother, so they are illegally occluded from public view and illegally discarded by the Clerk. See Exhibit 7 concerning public comments and City public records that are dishonored and discarded in violation of law.

Bad as that record keeping is, the City took public records mismanagement one large step further out of compliance with my public comments in this matter: my emailed comments, submitted

timely and with attachments, was routed to a "junk" email folder, where it remained until I made an inquiry. The City Clerk wrote she did not know why, and vaguely suggested some kind of problem with the electronic information system. Perhaps, but my experience with email is that when unwanted email is received from a known email address it can be set up to be routed to a junk folder or "spam" folder, as many are well aware. It so happens that I have submitted comments previously detracting from City actions or encouraging other actions where lacking, under the same email address. The implication is that my emails were deliberately routed to a junk folder, where they are typically deleted after 30 days or some period set by the user. In this event, I was disenfranchised from participation in the decision. In the future I may feel compelled to accompany each comment letter to the city with a public records request to ascertain whether or not my comments and others related to the public's business are being illegally junked.

Let the record in this appeal show the City's computer set-up for emailed public comments sent my emailed comments to a JUNK folder, so the Clerk did not provide them to the Planning Commission prior to the decision, and did not include them in the public record of the meeting, except for limited comments in the body of the email mainly describing the attachments. These are illegal actions, deleting public records, excluding them from consideration by the decision-makers, not posting complete comments received to the City's website with dissemination to the decision-makers, and not saving them in some form for retrieval upon request. The original comments and Petition are provided herein, with attachments, for this appeal record. Since this records mismanagement appears to be long-standing standard procedure at the City, at least as far as discarding attachments to emails, the City stands inexcusably in abject violation of the California Public Records Act requirements. The Planning Commission's action must therefore be set aside.

Public Notice Requirements Not Met

This item before the Planning Commission was announced by email from the City's list server on April 10, 2025, seven days before the planned meeting on April 17, 2025, when the agenda was posted online. Pursuant to City Code § 6.55.640 "Procedure to Grant Use Permits" subsection B.1. is the relevant part, and states:

> B. Notice Required. The zoning administrator shall give notice of application and hearing, not less than 10 days prior to the date of the hearing, in each of the following manners:
>
> 1. By publishing a copy of such notice one time in the official city newspaper.
>
> 2. By mailing a copy of such notice on a postcard to all property owners whose property is adjacent to any one or more of the parcels of property for which the use permit or variance is sought, using the ownerships' names and addresses from the last equalized assessment roll of the county. For the purposes of determining adjacent parcels of

property, public streets and rights-of-way shall be ignored and parcels shall be deemed adjacent if they have any point of their boundaries in common.

This agenda item was not properly noticed since the notice was given less than 10 days in advance, and only online. The notice concerning the project was NOT noticed in the official City newspaper of record. The City staff claimed provision 2., above, was met by contacting "adjacent property" owners. The City is also charged to faithfully implement the TRPA Compact through its MOU and by incorporation of certain TRPA regulations in its Code. In the instant case the Planning Commission was ostensibly acting as "TRPA Hearing Officer" and did not do what TRPA regulations require with regard to public notice for the hearing. The TRPA Rules of Procedure require the following:

12.6. NOTICE TO AFFECTED PROPERTY OWNERS

If notice is required, the proponent of the project or matter shall submit a list to TRPA of the names and addresses of the persons who own property, or a portion thereof, within 300 feet of the project area boundaries. The list shall be compiled from the current county assessor's rolls and shall be verified by the applicant. The proponent also shall provide addressed envelopes, postage prepaid to the persons listed. Notice shall be given to such persons by TRPA. Notice shall be given reasonably early in the project review process. The benefit of giving notice early in the project review process should be balanced with the potential for re-notice of the project if significant modifications occur during the review process. Notice to affected property owners may be waived if the applicant provides TRPA with a written waiver of notice from each affected property owner.

The TRPA regulations require notice to owners with properties within 300 feet of, not adjacent to, the development boundaries for "Hearings Officer" hearings, illegal though such hearings are. Since that was not done by the City, public notice requirements for this project were not met, thereby depriving the public of constitutionally protected rights to due process. See also SLTCC § 6.55.230.B.2. If the MOU has *any* legal validity the City must honor with regard to land use planning and permit administration, the City failed to meet TRPA's greater noticing requirements, while simultaneously and improperly providing only seven days public notice of the hearing, not ten. **Pursuant to SLTCC 6.55.640 the City should likewise observe the 10-day newspaper noticing requirement for this appeal hearing and, pursuant to the MOU, extend the notice to affected property owners within 300 feet of the project boundaries, as would be required if TRPA were conducting the hearing.** I will note TRPA publishes its public notices seven days in advance of its meetings pursuant to public meeting laws applicable to TRPA. However, the City failed to meet its own Code concerning 10-day noticing for the Planning Commission hearing, beyond dispute based on the public records provided me. Public notice for this project approval fails all tests. The Planning Commission's approval must be set aside by upholding this appeal.

Project Not in Compliance with Development Standards; Deficient Findings

The project was approved under a FONZE pursuant to TRPA regulations. It is relatively easy for me to go through the Staff Report for the project approval (see Exhibit 3) and Checklist responses and call into question a number of its conclusions and findings. I will point out a few things and I am going to share a comment letter concerning the project from another member of the public, previously unknown to me. The comments followed the approval from an individual who was also disenfranchised by the late and deficient public hearing notice provided by the City, and apparent confusion that TRPA would not be reviewing the project under the MOU. I found her short emailed comment letter to the City (Exhibit 8) among the public records I requested; at least it didn't get junked.

I subsequently found a more detailed comment letter on the project, with several attachments, sent by email to TRPA for the April 26, 2025 Governing Board meeting under agenda item XIII. General Public Interest Comments and posted on TRPA's website (I herein incorporate her comments in this appeal as Exhibit 9. It's a caring and thoughtful comment letter from Ms. Carthan raising a number of issues with potentially significant effects not addressed in the City staff report and inconsistencies with City and TRPA policies. The comment letter speaks for itself and I provide it as an example of how valuable public input has been and is thwarted by TRPA's deficient project reviews, its failures to conduct environmental impact studies, its failure to give adequate notice to the public and its public steam-rolling generally in service to its permit clients and its own narrow self-interests. Those deficiencies are further promulgated with the MOUs and TRPA's Kangaroo-Court of Appeals which is why the City should abandon the current MOU and send it to the "junk" folder.

I will mention Ms. Carthan notes potential impacts to "scenic thresholds" with construction of the four-story high-rise, and that several TRPA threshold indicator viewpoints are on or near the project site. The project is within a "non-attainment" area with regard to TRPA scenic thresholds; the Initial Environmental Checklist states that impacts are mitigated because the project meets standards of the Scenic Quality Improvement Program. Just my opinion, but I don't think this behemoth structure is going to improve the quality of anyone's "scenic view" of anything, they will see only the structure. The staff report indicates a number of TRPA thresholds were evaluated. Scenic evaluation was not included. I don't know why. My guess is it somehow doesn't matter in Area Plans, gets an exemption.

I noted that, in typical fashion, the applicant submitted a "geotechnical report" for the deep foundation design indicating "no impacts to ground water." Under the MOU the City refers these matters to TRPA, where TRPA will later approve the deficient report as a proper groundwater investigation, though it is not, in a back room at the office where no one will ever know unless they track the approval down through TRPA's project database. TRPA doesn't have a ground water protection program, doesn't have expertise; it has an "exception" program for ignoring significant ground water impacts and doesn't even follow that. Trust me, I sued TRPA in federal

court over their failings in that regard and the facts stand. Read the Court filings attached to my Petition to TRPA.

Traffic and evacuation in the event of wildfire are not addressed in the staff report though the project sits in the heart of one of the busiest intersections in the City, where Highway 50 and Pioneer Trail meet. There is no discussion of traffic impacts in the staff report or Findings. The Initial Environmental Checklist indicates "NO" increase in traffic hazards to motor vehicles, bicyclists or pedestrians, with no discussion, despite Commissioner Williams' voiced but unmitigated concerns with people-car and bike-car interactions. Ms. Carthan also raises these same traffic safety issues in her comments to TRPA, and other health and safety issues. The only discussion of traffic is on page 11 and mainly discusses the exemption to Vehicle Miles Traveled emissions standards and says the project meets parking standards; however, the staff presentation to the Planning Commission indicated parking standards were not met, and were allowed some exception or another not discussed in the written materials, or conflicting.

To highlight regional concerns with wildfire and evacuation planning, among other things, I am attaching a letter from Tahoe Clean Air (non-profit organization) to TRPA for a planning retreat held April 27, 2025 which adequately represents some my concerns. Mr. Flaherty has been commenting to TRPA on these fire and evacuation issues for years with entirely inadequate response, or none, from the TRPA. Meanwhile, TRPA and others are intent on potentially making evacuation more difficult, and thereby endangering lives, while not addressing the planning needs identified to protect public safety. The Tahoe region has been set up for a Lahaina or Paradise wildfire disaster, with congestion in town centers likely to make matters worse. The main point: little or no policy/planning in matters of public safety in this regard from the region's principal planning agency. It's not a priority. This project, located at one of the most significant traffic bottlenecks in the City is a case in point, with absolutely no analysis or consideration of public safety in the event of wildfire from the City (or TRPA) for this project – or any other under their FONZEs. Note that Checklists prompt discussion of these critical public safety matters which are routinely ignored, blindly dismissing potentially significant impacts.. See Exhibit 10.

These are but a few of the glaring planning deficiencies I could point out, typical of what I see on most TRPA projects with their Checklist approach to planning, duplicated here. I know City also uses Checklists to implement CEQA. The problem isn't the Checklist, which is simply a starting point. The issue is more with the level of analyses of the items in the Checklists so frequently just glossed over, with opportunities for public input severely limited by time and generally given no consideration anyway, as with Mr. Flaherty or myself. Both TRPA and City need to give more weight public input and facilitate public participation. Both agencies need to do the public the minimal service of posting on your websites current lists of applications received and project descriptions, links to project info in your database, and anticipated hearing schedules to encourage and facilitate public input given your short timelines for comments. Let the public know what's coming. (If it doesn't happen soon I'll likely start making timely routine regular

public record requests for same from each agency and submit the results myself as public interest comments for posting on TRPA's meeting website, with a moniker of shame for not minimally serving the public in this way.)

Conclusion: Uphold the Appeal

The City Council must uphold this appeal and comply with applicable laws and legal limitations on its authorities in these non-discretionary matters. City must cease trying to be TRPA for these project and permit approvals. Fulfill your duties under public meeting law, records administration, CEQA compliance and City permits implementing City Code. My Petition explains that under the Compact TRPA was given a higher charge to protect Lake Tahoe than provided by CEQA. CEQA provides statewide requirements for environmental planning reviews in California, and is what it is, but it's not the Compact. TRPA acted, in essence, to say CEQA is the standard we will apply at Lake Tahoe, forgetting their higher charge, usurping the public's civil rights and the Compact in the process by implementing illegal regulations for environmental review and project permitting. (They weren't as smart or didn't have as many lawyers as the Legislature that put together CEQA.) Then TRPA illegally delegated its mandated duties to the local governments.

The elected officials in my fair City must cease and desist from aiding and abetting TRPA in its fraudulent and illegal activities under the MOU. Either that or more appeals and/or other actions will be incumbent on the people to bring forward until the ship of state at Lake Tahoe is righted by bringing agency actions into compliance with law. The restoration of Lake Tahoe will follow the restoration of the rule of law at Lake Tahoe and we'll all be much better off.

In closing I would like to thank Director Hitchcock and the City Clerk for their timely responses to my requests for public records needed to prepare the appeal in this matter.

Respectfully, uphold the appeal.

Sincerely,

Alan Miller, Civil and Environmental Engineer

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

Exhibits:

1. July 2015 City-TRPA Memorandum of Understanding

2. March 2015 Notice of Liability to TRPA/Petition to Redress Grievances
3. April 17, 2025 Staff Report to Planning Commission
4. June 17, 2014 City Staff Report on MOU
5. July 15, 2015 City Staff Report for MOU Adoption
6. July 15, 2015 City Council Meeting Minutes
7. April 2025 email from City Clerk re Public Records Administration
8. April 17, 2025 Carthan email to City, Public Interest Comments
9. April 21, 2025 Carthan email to TRPA, Public Interest Comments
10. April 22, 2025 Tahoe Clean Air comment letter to TRPA re Wildfire Evacuation Planning

Exhibit 1

July 2015 City-TRPA Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
BETWEEN the TAHOE REGIONAL PLANNING AGENCY and CITY OF SOUTH LAKE TAHOE

This Memorandum of Understanding (MOU) is entered between the Tahoe Regional Planning Agency (TRPA) and City of South Lake Tahoe, herein referred to as "Public Entity." TRPA's authority to enter into this MOU with the Public Entity rests in Article VI (m) of the TRPA Compact (Public Law 96-551) and Sections 2.5 and 13.7 of the TRPA Code of Ordinances ("Code"). The Public Entity is authorized to enter into this MOU through its City Council. This MOU shall become part of the TRPA Code under Sections 2.5 and 2.6 upon signing by TRPA and the Public Entity.

PART 1 – GENERAL PROVISIONS

COMMON OBJECTIVES	TRPA and the Public Entity (the "Parties) have a common objective to conserve the resources of the Lake Tahoe Region, achieve and maintain the environmental threshold carrying capacities and enhance the effectiveness of government through the efficient implementation of the TRPA Regional Plan and Area Plans.
TERM OF AGREEMENT	This MOU is effective upon the signing of Attachment "A" by the Parties and incorporated into TRPA's Code of Ordinances and shall remain in effect until terminated without cause by either party following a 60-day notice in writing. The Public Entity and TRPA will prepare procedural guidelines to implement this MOU.
DEFINITION OF TERMS	Terms in this MOU shall have the same meaning as they do in the TRPA Code.
INTERPRETATION AND SEVERABILITY	The provisions of this MOU are subject to the interpretation and severability provisions of Section 1.6 of the TRPA Code.
DISTRIBUTION OF FUNCTIONS	Activities authorized by TRPA under this MOU are described in Attachment B (Table of Delegated Activities within Area Plans) and Attachment C (Table of Delegated Activities Citywide). Attachments B and C specify the extent to which activities are delegated. All delegated activities shall be reviewed and approved in accordance with the TRPA Regional Plan and Code of Ordinances. The Public Entity will not be

delegated review and approval of those activities set forth in Attachments B until training has occurred and the Public Entity liaison has indicated in writing the specific date the Public Entity will be responsible for reviewing and approving the delegated activities in accordance with the TRPA Regional Plan and Code of Ordinances.

In accordance with Section 13.8 of the TRPA Code of Ordinances, TRPA shall annually select and review a sample of development permits issued under Attachment B of this MOU within each Area Plan area in order to certify that the permits are being issued in conformance with the Area Plan.

DELEGATED ACTIVITIES

Attachments B and C of this MOU will supersede and replace the following existing delegation MOUs currently under the responsibility of the Public Entity:

- Temporary Activities (1988)
- Transfers of Existing Development (1988)
- Single and Multi-Family Residential Structures (Appendix L, 1995)
- Commercial, Multi-Family, Tourist, et al. (Appendix KK, 1999)
- Signage (Appendix CC, 2000)

Permitting authority described in Attachment B shall not be in effect until the specific date that Public Entity has taken responsibility for Attachment B as described in "Distribution of Functions" above. However, delegated permitting authority described in Attachment C shall be in effect immediately. The following existing exempt activity MOUs will not be affected by this new MOU:

- Public Works (Appendix MM, 1991)
- Defensible Space Tree Removal (2013)

COMMUNICATION

The Parties shall each designate a liaison for direct communication of matters related to this MOU. The Public Entity liaison and the TRPA MOU Coordinator shall meet at least quarterly to review this MOU and to establish policy directives, training needs, and renew communications.

TRAINING

TRPA shall provide initial and ongoing training to the Public Entity regarding the provisions of this MOU.

	Training shall be provided for matters affecting this MOU, as determined by MOU liaisons, which may include but is not limited to: changes to the TRPA Code, Area Plans, and Regional Plan; policy or procedural changes; and training needed for corrective actions or to clarify MOU provisions. TRPA and Public Entity are dedicated to providing mutual support in all matters related to activities described in this MOU, and shall respond to requests for support in a timely manner. In order to ensure consistent application of TRPA Code basin-wide, TRPA shall provide to Public Entity records of all Code Interpretations made by TRPA staff or Executive Director.
EXAMINATION OF RECORDS	Every record of activity under this MOU shall be open for examination in accordance with Article VI (o) of the TRPA Compact.
PROCEDURES FOR RESOLVING DISPUTES	In the event of a dispute or difference of interpretation regarding the terms or conditions of this MOU, resolution shall first be pursued by the MOU liaisons, and if the liaisons are unable to resolve the dispute then by the executive officers of the Parties. If the executive officers are unable to resolve a dispute, the TRPA Executive Director or City Manager may terminate the MOU or recommend that the matter be heard by the TRPA Governing Board and/or City Council.
EMERGENCIES	The TRPA Rules of Procedure allows the TRPA Executive Director to issue an emergency permit for a situation or circumstance which poses immediate danger to life, property or the environment and demands immediate action in order to comply with the Compact, Regional Plan, Code and/or Rules of Procedure. This MOU does not change the process for issuing an emergency permit.
AMENDMENT	This MOU may be amended from time to time by mutual agreement of the Parties in writing subject to Governing Board and City Council approval. Proposed amendments shall be presented to the liaisons (for approval by their respective agencies) as soon as possible to facilitate timely consideration of proposed amendments.

ASSIGNMENT	None of the authorities, duties or responsibilities set forth in this MOU shall be assigned, transferred or subcontracted to a party other than that named in Attachment A, without written consent by TRPA. TRPA may maintain a list of pre-qualified consultants that have been authorized to review projects on contract for TRPA. The Public Entity may choose to use consultants on the current list to undertake responsibilities set forth in this MOU on behalf of the Public Entity without further authorization from TRPA.
EXISTING MOU	This MOU supersedes existing MOUs between the Public Entity and TRPA as identified in "Delegated Activities" above.

Part 2 – PERFORMANCE STANDARDS

The following standards shall apply to activities authorized under this MOU. All activities shall be reviewed and approved in accordance with the TRPA Regional Plan, Code of Ordinances and Rules of Procedure. The Parties shall consult with each other regarding any uncertainties about these standards.

ENVIRONMENTAL DOCUMENTATION	Exempt and Qualified Exempt classes of projects are not required to complete a TRPA Initial Environmental Checklist for the activity pursuant to Section 3.3 of the TRPA Code. All other classes of projects shall be reviewed in accordance with the Environmental Documentation requirements of Chapter 3 of the TRPA Code and applicable sections of the Rules of Procedure. Environmental Documents prepared by the Public Entity shall be made available for comment by TRPA upon request.
SPECIAL CONDITIONS	The Public Entity shall administer all standards of the TRPA Regional Plan and Code as applicable to the activities authorized by this MOU in accordance with the provisions of this agreement. The Public Entity shall include special conditions of approval, as needed, to ensure approved projects are consistent with the Compact, Goals and Policies, Code, Rules of Procedure, Community Plans, and Area Plans. Nothing in this MOU shall be deemed to limit the land use regulatory powers of either the Public Entity or TRPA.
FEES AND SECURITIES	Public Entity shall be authorized to collect application and mitigation fees, security deposits, and other designated fees in accordance with fee schedules to be provided to Public Entity by TRPA. Such fee schedules shall be sufficient in detail to provide specific information concerning fee calculation to assist Public Entity in performing fee collection activities. Furthermore, Public Entity shall be authorized to retain a percentage of all application fees collected to offset Public Entity's costs of administering the provisions of this MOU. Such percentage shall be mutually agreed upon in writing by TRPA and Public Entity, and may be amended from time to time by mutual agreement of the Executive Director and the City Manager. Public Entity shall transmit TRPA fees collected by the Public Entity to TRPA, as identified above, on a quarterly basis (within 30 days of the end of the quarter).

FINDINGS	The Public Entity agrees to make all findings required by the Compact, Regional Plan, Area Plan and Code for project, approval, and inclusions of special conditions not inconsistent with the Area Plan. The Public Entity shall keep, as part of their permanent permit files records, all written findings required in the Compact, Regional Plan, Area Plan and Code for the activities approved under this MOU.
MONITORING	On a quarterly basis, the Public Entity shall send to TRPA copies of all building permits issued. Such building permits shall be in a format approved by TRPA and shall contain and make clear the necessary development information TRPA needs to measure compliance with the terms of the Regional Plan, such as additional land coverage, commercial floor area, residential units, or tourist accommodation units (TAUs). In maintaining permit files, Public Entity shall utilize hard copy and/or electronic tracking forms provided by TRPA to record all inspections, verifications, land coverage and commodity information and other project review activities. The MOU Procedural Guidelines developed under Part 1, shall include a permit monitoring schedule and permit information reporting requirements.
RECORD KEEPING AND REPORTING	As further described in the MOU Procedural Guidelines, a data report outlining permit activities, including transfers of development, shall include the type of permits issued as well as the location of BMPs implemented through permits. The data report shall be made available to the public. Public Entity shall participate in the annual accounting and reporting of Environmental Improvement Program (EIP) Performance Measures resulting from City efforts to implement the EIP. Public Entity shall also transmit a copy of the NPDES Annual Report (including Pollutant Load Reduction Report) each year when submitted to the Lahontan Water Quality Control Board. The Public Entity shall adhere to all provisions contained within TRPA Code Chapter 6, relating to account file data (TRPA Code Sections 6.5, 6.6 and 6.7), including coverage, allocations, and any other applicable procedures as described in the MOU Procedural

	Guidelines. All project accounting shall be completed by Public Entity and transmitted to TRPA to be included in its permanent accounting and tracking records. Public Entity shall submit completed tracking forms to TRPA on a quarterly basis.
SITE INSPECTIONS	Public Entity shall perform site inspections to ensure that the projects and activities permitted under this MOU are constructed in accordance with the approved project, including installation of BMP's. The Public Entity shall have authority and responsibility to take any and all administrative steps to enforce the standards of the TRPA Code as authorized by this MOU, including the processing of Code violations involving unpermitted activities. TRPA will enforce BMPs associated with permits issued by TRPA and for BMP retrofits not associated with an adopted TMDL Pollutant Load Reduction Plan and Public Entity will enforce BMPs associated with TRPA permits issued by the Public Entity and for properties identified in their adopted TMDL Pollutant Load Reduction Plan(s).
VIOLATIONS	Upon final inspection, if the project has been constructed in accordance with the permit, Public Entity shall be authorized to release the security deposit to the project applicant. Upon discovery of a TRPA Code violation associated with a permit issued by TRPA, Public Entity shall immediately notify the designated TRPA Code Administration staff in writing. TRPA may also perform inspections and determine if a violation exists. Settlements of TRPA Code violations involving civil penalties must be approved by TRPA. Upon discovery of a TRPA Code violation associated with a permit issued by Public Entity, the Public Entity shall have authority and responsibility to take any and all administrative steps to enforce the standards of the TRPA Code as authorized by this MOU, including the processing of Code violations involving unpermitted activities. If a TRPA Code violation cannot be resolved by the Public Entity on-site, the Public Entity shall contact TRPA to institute TRPA's compliance procedures.
APPEAL ALLOWED	Final decisions on projects delegated to a Public Entity may be appealed to the TRPA. An appeal may only be filed by an aggrieved person as defined in Article VI(j)(3)

	of the Compact. Decisions by the Public Entity under independent local, state, or federal law are not the subject of this appeal process. Appeals shall meet the requirements of 13.9 (Appeals) of the Code of Ordinances.
NOTICE	The Public Entity shall give notice to TRPA of all projects delegated to the Public Entity that require notice to affected property owners pursuant to Article 12 of the TRPA Rules of Procedure, and shall give notice to TRPA of all applications to amend a policy or ordinance that is part of an Area Plan. The notice shall be sent pursuant to Public Entity notification procedures; however, in all cases the notice shall be sent no less than 10 days prior to the hearing or action in order to provide TRPA with adequate time to review and comment, if desired, on the project.
INCORPORATION OF REGIONAL PLAN AMENDMENTS INTO AREA PLAN	If TRPA approves an amendment to the Regional Plan that would also require amendment of an Area Plan to maintain conformity, the Public Entity has one year to amend the Area Plan to demonstrate conformity with the TRPA amendment. If the Governing Board finds that the Public Entity failed to demonstrate conformity with the TRPA amendment following the one-year deadline, then the Board will identify the policies and/or zoning provisions in the Area Plan that are inconsistent and assume lead agency authority under the Regional Plan to amend those policies and provisions. In the event this occurs the amendments would only be in effect as part of the Regional Plan and not Public Entity regulation.

ATTACHMENT A

AREA PLAN
MEMORANDUM OF UNDERSTANDING
BETWEEN THE TAHOE REGIONAL PLANNING AGENCY AND
CITY OF SOUTH LAKE TAHOE

TRPA's authority to enter into this Memorandum of Understanding (MOU) with local entities rests in Article VI (m) of the TRPA Compact (Public Law 96-551) and Sections 2.5 and 2.6 of the TRPA Code of Ordinances. The authority of the Public Entity to enter into this MOU rests in the City Council.

This MOU shall become effective when signed by the parties listed below.

TAHOE REGIONAL PLANNING AGENCY

Date: 12·18·14

By: Joanne Marchetta
Executive Director

CITY OF SOUTH LAKE TAHOE

Date: 1/13/15

By: Nancy Kerry
City Manager

APPROVED AS TO FORM:

ATTEST:

Susan Alessi, City Clerk

CITY OF SOUTH LAKE TAHOE 19 65 CALIFORNIA

ATTACHMENT B
TABLE OF DELEGATED PERMITTING AUTHORITY WITHIN AREA PLANS

Note: The activities described in this table are delegated to the Public Entity within Area Plans and shall be reviewed and approved in accordance with the TRPA Regional Plan and the Code. The activities do not require TRPA review and approval except as required by this Memorandum of Understanding.

Line No.	Activity Level	Activity
1		Residential Development within a Regional Center which is less than 100,000 square feet (of new floor area)
2		Residential Development within a Town Center which is less than 50,000 square feet (of new floor area)
3		Residential Development outside of a Town or Regional Center which is less than 25,000 square feet (of new floor area)
4		Commercial, Tourist Accommodation, Public Service, and Recreation Development within a Regional Center which is less than 80,000 square feet (of new floor area)
5		Commercial, Tourist Accommodation, Public Service, and Recreation Development within a Town Center which is less than 40,000 square feet (of new floor area)
6		Commercial, Tourist Accommodation, Public Service, and Recreation Development outside of a Town or Regional Center which is less than 12,500 square feet (of new floor area)

- This MOU does not delegate authority for pre-project applications such as unit of use verifications, land capability verifications, land coverage verifications, land capability challenges, etc.
- Projects and matters that meet one of the following criteria and that are also identified in Section 2.2.2 of the Code as requiring approval by the Governing Board or Hearings Officer shall be reviewed by TRPA:

A. All development within the Shorezone of Lake Tahoe;
B. All development within the Conservation District;
C. All development within the Backcountry District;
D. All development within the Resort Recreation designation; and
E. All development meeting the criteria in the following table:

	Regional Center	Town Center	Not in Center
Residential	≥ 100,000 sq. ft.	≥ 50,000 sq. ft.	≥ 25,000 sq. ft.
Other	≥ 80,000 sq. ft.	≥ 40,000 sq. ft.	≥ 12,500 sq. ft.

(All measurements are new building floor area.)

ATTACHMENT C
TABLE OF DELEGATED PERMITTING AUTHORITY CITYWIDE

Note: The activities described in this table are delegated to the Public Entity and shall be reviewed and approved in accordance with the TRPA Regional Plan and the Code. The activities do not require TRPA review and approval except as required by this Memorandum of Understanding.

Line No.	Activity Level	Activity
1		Temporary Activities
2		New/Additions/Modifications to Residential Development qualifying for a CEQA categorical exemption and not requiring Governing Board approval[1]
3		Commercial Development where new floor area does not exceed 2,500 square feet[2]
4		Minor Additions/Modifications to Tourist Accommodation Uses[2]
5		Temporary Uses[2]
6		Temporary Structures[2]
7		Commercial Changes in Operation[2]
8		Signs

1. As long as the applicable TRPA regulations are being complied with and enforced, new/additions/modifications to single family residential and multi-family residential less than four units shall be deemed a qualified exempt activity under TRPA regulations.
2. Review of these projects shall be limited to those projects identified in Chapter 2 of the TRPA Code, as amended, as staff or Hearings Officer level. Where the review level is identified as Hearings Officer, all procedures identified in the Hearings Officer Procedural Guidelines shall be used. Where feasible joint TRPA Hearings Officer/City Zoning administrator or City Planning Commission public hearings shall be held.

- This MOU does not delegate authority for pre-project applications such as unit of use verifications, land capability verifications, land coverage verifications, land capability challenges, etc.

Exhibit 2

March 2015 Notice of Liability to TRPA/Petition to Redress Grievances

JULIE REGAN, EXECUTIVE DIRECTOR
TAHOE REGIONAL PLANNING AGENCY
PO BOX 5310
STATELINE NV 89449

MARCH 25, 2025
CERTIFIED U.S. MAIL
NO. 9589 0710 5270 1159 5655 22

VIA COURTESY EMAIL TO **TRPA GOVERNING BOARD MEMBERS AND STAFF**: Hayley Williamson – Chair, NV At-Large Member (unelected), hayley.a.williamson@gmail.com; Vince Hoenigman – Vice Chair, Governor of CA Appointee (unelected), vhoenigman@yahoo.com; Meghan Hays – (Biden) Presidential Appointee (unelected), Meghan.hays9@gmail.com; Cindy Gustafson – Placer County Representative, cindygustafson@placer.ca.gov; James Settelmeyer – NV Department of Conservation and Natural Resources Representative (unelected), jsettelmeyer@dcnr.nv.gov; Brooke Laine – El Dorado County Supervisor, BOSFive@edcgov.us; Ashley Conrad-Saydah – Governor of CA Appointee (unelected), ashleyc@alumni.princeton.edu; Wesley Rice – Douglas County Commissioner, wrice@douglasnv.us; Francisco Aguilar – Office of NV Secretary of State (unelected) fvaguilar@sos.nv.gov; Shelly Aldean – Carson City Representative, shellyaldean@gmail.com; Alexandra Leumer – CA Senate Rules Committee Appointee (unelected), TRPALeumer@yahoo.com; Ben Kieckhefer – NV Governor Appointee (unelected), benontrpa@gmail.com; Belinda Faustinos – CA Assembly Speaker Appointee (unelected), belindafaustinos@gmail.com; Cody Bass – City of South Lake Tahoe Council Member, cbass@cityofslt.us; Alexis Hill – Washoe County Commissioner, District 1, AHill@washoecounty.us; Julie Regan – TRPA Executive Director (unelected), jregan@trpa.gov; Graham St. Michel – TRPA General Counsel (unelected), gstmichel@trpa.gov; Marja Ambler – Clerk to the Board (unelected), mambler@trpa.gov. VIA EMAIL TO: trpa@trpa.gov; and publiccomment@trpa.gov.

NOTICE OF POTENTIAL CRIMINAL AND CIVIL LIABILITY AND OTHER LEGAL SANCTIONS

NOTICE TO PRINCIPALS IS NOTICE TO AGENTS

NOTICE TO AGENTS IS NOTICE TO PRINCIPALS

CEASE AND DESIST COMPACT VIOLATIONS FORTHWITH: Staff approvals of permits and planning matters under illegal delegations of authorities reserved to the Governing Board alone. Fraudulent project and permit exemptions. Failures to prepare Environmental Impact Statements with reliance on staff-reviewed checklists and findings of no significant effect for approvals. Illegal appeals for staff decisions.

Illegal and unconstitutional regulations are NULL AND VOID, WITHOUT FORCE, INVALID AND IRRELEVANT. TRPA shall act at all times in accordance with the provisions of the Compact and cease all illegal abuses of Compact requirements under invalid and unconstitutional TRPA regulations.

You are HEREBY NOTIFIED that as an appointee, official or agent of the Tahoe Regional Planning Agency you may be subject to potential civil liability for violations of the Tahoe Regional Planning Compact and/or other penalties and sanctions under state and federal laws, in your official capacity and/or in your capacity as an individual.

You are in violation of the Tahoe Regional Planning Act ("Compact" as amended, Public Law 96-551, 94 Stat 3233, California Government Code Section 66801, Nevada Revised Statutes 277.200.)), Article I(c): "The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provision of this compact." The Tahoe Regional Planning Agency (TRPA) administration, its officials, appointees, staff and agents have failed to interpret and administer its ordinances, rules and regulations in accordance with multiple provisions of the Compact, and in so doing has violated the U.S. Constitution, as discussed herein.

TRPA is a "person" for legal purposes, as are individuals employed or appointed to serve the agency. In addition to other administrative remedies and sanctions that may apply against TRPA and/or you, the following Compact provision facially confers legal standing for the United States, the states of California and Nevada, other organizations or "persons," or individuals aggrieved by TRPA action to seek appropriate remedies for the alleged willful and grossly negligent violations of the Compact and other laws. Compact Article VI(l) provides, in relevant part:

> "Any person who violates any provision of this compact . . . is subject to a civil penalty not to exceed $5,000. Any such person is subject to an additional civil penalty not to exceed $5,000 per day, for each day on which such a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence."

You are in violation of 5 U.S. Code § 3331 - Oath of office, which states:

> An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath to support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

The above oath is not valid unless properly sworn to with signed affidavit, dated, sealed and notarized. You are also in violation of 5 U.S. Code § 3332 - Officer affidavit; no consideration paid for appointment, which states:

> An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.

Violations of these 5 U.S.C. sections are felonies and may result in criminal and/or civil liability and/or confinement in federal prison upon conviction.

Petition to Tahoe Regional Planning Agency

for

Redress of Grievances for Compact Violations

From Provisions In the

Code of Ordinances

and

Rules of Procedure;

and

Petition to Undertake

Microplastics Environmental Problem Assessment

March 25, 2025

Alan Miller, Professional Engineer

CA Civil 57473

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Attachment 3: *Miller v. TRPA*: Objections to Magistrate Judge's Findings and Recommendations

Attachment 4: Anna Von Reitz's **International Public Notice: Worldwide Dependency**

PETITION FOR REDRESS OF GRIEVANCES

No TRPA Appointee or Officer Serves Under a Valid Federal Loyalty Oath

I will begin this petition with the failure of any TRPA appointee or officer to subscribe to the federal loyalty oath required to serve, a declaration to faithfully support and defend the Constitution against its enemies, be they domestic or foreign. The undeniable evidence is based on public records obtained during my lawsuit, thanks to former General Counsel Marshall's clarifying input. (See Attachment 1, pdf pp 24-25 and pdf pp 48-60.) Governing Board members and executive managers are serving under fraudulent auspices, and FRAUD VITIATES ALL: All actions, all regulations, all acts taken, as far back as the fraud goes. While I will grant that TRPA has changed certain practices for the better concerning its public meeting and public records administration in the wake of my federal lawsuit *Miller v. TRPA*, on the major points the record of the TRPA is one of unrepentant recalcitrance.

The TRPA appointees and officers have committed felonious acts under color of law by operating in the absence of a loyalty oath to defend the U.S. Constitution. How long this has gone on is not known, perhaps since the beginning of the TRPA. Nonetheless, the TRPA Governing Board unanimously reaffirmed its commitment to continue the criminal oath violations on the record in January 2025 following my testimony before it. With TRPA's former lead attorney on record verifying, beyond dispute, that TRPA doesn't have anyone serving with a valid federal oath of office, the fraud is fully exposed for public awareness. The staff (employees) have stolen the rights of the people and run amuck.

For but one example, the current Governing Board Chair, Haley Williamson, is an appointed "member at large" elected by no one and subscribing to no government oath whatsoever. She thus epitomizes the appointed, "unelected bureaucrat." She is also an attorney and swears a private oath to the State Bar Assn. of NV, a sort of "secret society" in the view of many that carries on in *Latin*, a language most aren't taught; she should not be given the benefit of any doubt about her innocence. She and the rest recite the Pledge of Allegiance "to the United States of America, and to the Republic for which it stands . . ." at each meeting without any apparent realization that the "United States of America" is an incorporated "person" and legal fiction *standing in* for the Constitutional Republic of the people. The Governing Board members and staff are foxes or are duped "patsy's" and support the USA-TRPA corporations, not the legitimate government established by the Constitution. While they appear not to have any understanding of the greater subterfuge in which they play a role, or pretend not to, see the information in the public sphere in Attachment 4. These writings by Anna Von Reitz warn of what may come from this usurpation of the rights of the people by administrative bureaucrats and corporate actors appointed (not elected) to serve TRPA. Ignorance of the law is no excuse and is untenable here with plenty of lawyers at TRPA among the ranks.

TRPA has had a "safe harbor" for their felonious service and actions contrary to the Constitution in the past, in the courts and elsewhere. They've had opportunity to recite and document the simple federal oath required numerous times and they've chosen not to do so. My suggestion is they should all resign. Wouldn't it be nice to spend more time with family, perhaps before serving a prison sentence?

TRPA STANDS ON LEGAL QUICKSAND; SUMMARY OF PETITION FOR THE GENERAL PUBLIC

The comments herein will show that substantial portions of TRPA's regulations are legally invalid. The restoration of Lake Tahoe depends in no small part of restoring the rule of law at Lake Tahoe. Every word herein is aimed at protecting and preserving Lake Tahoe and the Tahoe region, protecting the people who live in and visit the region, or who depend on the purity its drinking water. I assert water quality improvements in Lake Tahoe have stagnated for decades because the TRPA has not embraced its mission under the Compact, particularly by avoiding interdisciplinary, interagency reviews of projects and planning amendments under environmental review requirements. Now science discloses extraordinary contamination in Lake Tahoe with toxic microplastics. I assert this contamination has been brought about by faulty, illegal approvals of shorezone projects by TRPA, which refuses to act to abate the problems while worsening them. It is not easy to contaminate a lake the size of Lake Tahoe with microplastics but that is TRPA's great accomplishment, with partner-agency culpability.

TRPA has enacted regulations in violation of the Compact which have empowered it to entirely subvert and avoid certain Compact requirements to prepare and consider environmental impact statements (EIS) prior to approving of projects with significant effects. TRPA seldom prepares an EIS for any project based on following the illegal regulations and procedures it has put in place, though that activity is among its primary charges under the Compact. TRPA's staff of planners and lawyers, largely lacking professional scientific credentials (e.g., physics, chemistry, biology, geology, hydrology, limnology, engineering, water quality, soil or wetland science expertise, higher math, etc.) sits in isolation completing impact checklists under a deficient review system the staff is indoctrinated into by those in charge. TRPA claims to "follow the science" but they don't and can't because they are nearly all non-scientists with (urban) planning backgrounds and credentials, paper pushers. They certainly can't lead with science. (For a brief historical perspective see my Settlement Offer, Exhibit 5 of Attachment 1, pdf pp 69-70.)

One has to wonder why a planning agency would set up a regulatory system to avoid doing the very EIS-type planning it was established for, and whether Lake Tahoe might have been restored by now had TRPA not undertaken to subvert the Compact environmental review and approval requirements fairly early in its history. My view is that TRPA traded effectiveness for efficiency to facilitate getting permits and plans completed by doing most of its work behind closed doors. They shoved the public and all others aside to avoid permitting delays and backlogs for large numbers of permits and impacts they didn't know how to address; it's best not to look too hard for impacts and avoid the costs and delays of EIS requirements, the EIS being a sort of "last resort" when all else fails to support a project or planning action. I can imagine TRPA actor justifications: "There's a lot permitting to be done. It's best not to ask others, solicit comments; we have to respond to agency comments. Don't give anyone time to really consider and comment on proposed actions. We are the experts. We've got this! Paint a rosy picture of progress toward restoration under the Environmental Improvement Program. We just need more time and funding."

The Age of the Psy-Op

In an age where very little is as it seems we should not be surprised by the subversive TRPA regulations. We live in a world controlled by the "secret societies" President Kennedy and others warned of long ago, the unseen trillionaires, the militaries and their socialized contractors, CIA, bankers, Blackrock, etc., Washington D.C. a swamp. Kennedy had a lot of secrets, too, more coming out. We're in a corporate fiction. It's all "hidden in plain sight" as the CIA (Capitalism's Invisible Army) has quietly disclosed while continually running psy-ops on the American people and the world. The **Secret**ary manages the secrets. They seek only control and to rob the people of their power. It's an old game, people are sick of it and sick from it, the massive governmental corruption, all of the lies. Many are just waking up to find the world is organized as one big psy-op composed of many little ones, to the detriment of humanity. These comments will provide a glimpse into how the power structures work their hidden agendas through the laws and by co-opting willing and unsuspecting people and wage-slaves to install and maintain villains and stooges to act out their subterfuges. TRPA will be our prime regional example of corporate federal bureaucracy in action, a so-called "government service provider." (See Attachment 4.) I will be doing my best at rooting out the veiled illegalities from bloated TRPA regulations.

From a compassionate viewpoint, we've all been swept up in various illusions perpetuated by these secret societies our whole lives, spell-bound to think government is our friend instead of a corporate tool organized by and for the rich. We are a nation established on high principles of law, nonetheless. Therefore, the discussion that follows is grounded in the Constitution for the United States that established our republican form of government, the Bill of Rights and a plain reading of the applicable federal and state laws. I need nothing more than that, just the facts, with some added commentary. I attempt to cut through the legal mumbo-jumbo and subterfuge to show what needs to change in my opinion. This is a time of extraordinary change, and a time when a lot of hidden secrets are being exposed, including massive government corruption and theft. I pose that TRPA will either evolve with the changes or be swept away by them, no status *quo*.

Why Has TRPA Failed In Its Mission to Restore Lake Tahoe?

There has been something that has often puzzled me here at Tahoe, a region with arguably the most regulations per capita, and $3B in public funds so far spent for restoration: Why has environmental progress as measured by Lake clarity stagnated for three decades? I think I've discovered the answer in large part and I will share what I've discovered through my regulatory background in water quality and waste management and three decades of experience with TRPA, through my involvement as a water quality advisor in the lawsuit against TRPA/Verizon Wireless for a fake-pine macrotower approval filed by Eisenstecken/Benedict/ Environmental Health Trust, and through my lawsuit, *Miller v. TRPA*, over TRPA failures to protect ground water and TRPA's administrative "kangaroo court" of appeals. The analysis herein is not hard to understand, could be done by many I suppose, and it has apparently been waiting over three decades, for this unique time in history, to occur. I will attempt a several-page summary here for the general public, paraphrasing the laws and regulations in some places for

comprehensibility and to point out critical elements, before taking a deep dive into the details of these matters for those who care to follow.

Subverting the Compact; Delegating Governing Board Authority to Staff Is Illegal

I'm going to make this very simple. I'm not an attorney and I can nonetheless read and comprehend, and I know what I know about the laws. I admittedly know less about the criminal law than administrative law and nonetheless assert there is a degree of criminality in play. Who am I? I am a sovereign man of the land with information to share under the First Amendment. The simple part is seeing exactly how TRPA accomplished its nearly complete and total subversion of Compact requirements with regard to approvals of projects, permits and certain planning matters**. In the regulations the Governing Board adopted, TRPA simply took the position that TRPA staff *authority* equals Governing Board *authority*,** with caveats where noted in the regulations by specific reference to the Governing Board. Project approval authority, with few exceptions, was delegated from the Governing Board to the staff under illegal, streamlined codified review procedures. I assure the reader the TRPA staff has no such authority under the Compact, only under the corrupt regulations adopted by the TRPA. The basics of that trespass are only a little bit harder to understand, as follows.

Governing Board Voting Requirements

The key requirements to grasp are in Compact Article III(g):

> (1) For adopting, amending or repealing environmental threshold carrying capacities, the regional plan, and ordinances, rules and regulations, and for granting variances from the ordinances, rules and regulations, the vote of at least four of the members of each State agreeing with the vote of at least four members of the other State shall be required to take action. If there is no vote of at least four of the members from one State agreeing with the vote of at least four members of the other State on the actions specified in this paragraph, an action of rejection shall be deemed to have been taken.
>
> (2) For approving a project, the affirmative vote of at least five members from the State in which the project is located and the affirmative vote of at least nine members of the governing body are required. If at least five members of the governing body from the State in which the project is located and at least nine members of the entire governing body do not vote in favor of the project, upon a motion of approval, an action of rejection shall be deemed to have been taken. A decision by the agency to approve a project shall be supported by a statement of findings, adopted by the agency, which indicates that the project complies with the regional plan and with applicable ordinances, rules and regulations of the agency.

Both (1) and (2) require voting by Governing Board members to execute an "action." By the voting requirements all authority for legally-binding "action" is only with the Governing Board, and must be within the limits of Governing Board authority *under the Compact*. That authority does not include delegating their voting requirements to staff! While TRPA does tend to implement (1) through its

regulations for planning matters, TRPA has essentially built its entire regulatory permit program, with few exceptions, on failing to implement (2), above. This is the quicksand on which TRPA has established the foundation for major parts of its regulatory program. **Remove the legally-erroneous regulatory Code definition of "Agency," and all else in the fraudulent regulatory program associated with requirements for "project review and approval" falls with it.** Because TRPA has so badly bungled the regulations, when requirements for legitimate "exemptions" from certain or all TRPA "review and approval" requirements under Compact provisions are considered, the task of ferreting out the subversive regulations becomes much more complex. I will leave those details for later.

TRPA Must Be Stopped By Others

The writings herein expose a great FRAUD that has been perpetrated *for at least 35 years* by TRPA against the people and potential remedies that any "aggrieved" person, organization, or other entity with legal standing to initiate litigation against TRPA may undertake. (Compact Art.VI(j)(3).) All that is required for standing to sue TRPA is to provide written comments or oral testimony to TRPA about a matter under consideration (and decided) with issues ripe for adjudication in a federal court or other court of appropriate jurisdiction. This is not the first time I've written of these subverted voting requirements and related things. Far from it, but the comments here will augment and expand my prior writings and public testimonies on these matters into the subjects of exemptions for environmental review and other exemptions.

Like an "emperor with no clothes," TRPA parades on the shakiest legal ground under the regulations TRPA adopted as the Code of Ordinances (COO) and the Rules of Procedure (ROP), touting to the public that they are of finest cloth. While TRPA should rightly be embarrassed by their errors, I expect they will defend their nakedness and rags to their bitter end to obscure the simple facts and its misfeasance. TRPA won't admit an error no matter how blatant; here's why. COO 1.6 states:

> The provisions of the Code and the Goals and Policies effectuated and implemented by the Code shall be liberally construed to effect their purposes. If any section, clause, provision, or portion of the Code or of the Goals and Policies is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Code or the Goals and Policies, as the case may be, shall not be affected. For this purpose, the provisions of the Goals and Policies are declared respectively severable and the provisions of the Code also are declared severable.

This is a legal bar set to chill public input and dissent, not to promote good governance. It supports the power structure which supports it, "in plain sight" as I see it. What TRPA is explicitly stating here is that it will not change invalid and unconstitutional regulations it adopts unless a judge decides the matter. They invite lawsuits because that has worked in the past. It's an explicit statement of implicit underlying legal principles: "If you have a legal complaint, sue us," and further that invalidating one provision does not invalidate all related provisions. I'll show the COO definition of "TRPA" is invalid for the purposes of illegal delegation as applied in the COO and ROP, thus invalidating major portions of the COO and ROP; <u>TRPA must be sued for all related provisions that violate the Compact by which someone is aggrieved.</u>

Even though TRPA is empowered to amend its regulations, as it has many times, it will not respond to these matters unless legally compelled to do so. That's the set-up, so any "aggrieved" person may sue TRPA if you desire change, because history shows TRPA won't otherwise change these regulations. I wish it were otherwise or that I could see another way. Not seeing that, this petition is what I've put forward to save our beloved Lake Tahoe from the highly detrimental actions and failures of TRPA.

These comments will show that TRPA has adopted regulations that subvert the will of Congress and the States expressed in adopting the bi-state statute law which established the TRPA, the Tahoe Regional Planning Compact. The regulations have enabled TRPA to deprive the public of rights guaranteed under the law, caused multiple great environmental harms and propped up an enormous waste of public funds. (Certainly not all is wasted; TRPA is mainly a funnel for public funds for needed *work by others* as I see it.) TRPA has for several decades run a legal charade which I will expose here concerning the manner in which TRPA has utterly and completely abused its authority by illegally adopting regulations counter to the Compact. These abuses generally fall in the categories of environmental review procedures for project permits and planning matters, approval requirements, and projects exempt from TRPA regulations—but not only those categories. More lawsuits and other actions against TRPA may be needed to reverse this situation and I invite them in droves by those aggrieved as events may arise.

TRPA Subversions of the Compact

Before moving to litigable issues I will provide a briefing on Compact requirements and how the TRPA has purportedly implemented them. I will show the TRPA regulations do not implement the Compact provisions, they subvert them. The subversion of law by regulation is an old trick of the "administrative state" which has often imposed its tyranny on the public to deprive the people of the rights guaranteed under the U.S. Constitution and/or the State Constitutions, in this case those of California or Nevada. When one begins to understand that TRPA regulations undercut the most fundamental aspects of the environmental protection mission it is charged to uphold under the Compact, one begins to understand why Lake clarity and water quality and the environment in the Tahoe region has worsened or stagnated for decades. It has resulted from the regulatory activity subverted to essentially miss or deny impacts where they exist and subvert and encumber opportunities for public participation and input from other agencies and professional environmental managers. TRPA has sold out the public trust in environmental protection by enacting and following corrupt regulations and pursuing its own regional development goals and agendas, as dictated by their globalist psy-op managers.

It is not very difficult to understand how TRPA has accomplished its subversion of the Compact and it will nonetheless take some explaining to lay out the black and white of the arguments and the subversion of inalienable rights and why that is so very important. The record of the TRPA shows it will not readily change to correct its legal deficiencies and subterfuges; rather, the record shows that TRPA will "double-down" every time it is challenged for its corrupt misfeasance because it has worked in the past. My experience has taught that government agencies are not empowered to admit of any failings,

with everyone “doing the best we can” in a complex scenario with lots of hiding places, in plain sight, yes, but also camouflaged in *seeming* legal complexities and uncontrollable factors, and defended in their legal forum—where most fear to tread.

More Lawsuits Are Needed; Standing to Sue

The past is dead. I encourage those in government charged with TRPA oversight to act, to break with the past and more of the same based on this information. While I’ve CC’d other governmental entities with this information to empower their action the people needn’t wait for others to act. In this touted “new golden era” these comments are provided in the public interest to encourage the *public oversight* of government envisioned in the Constitution. It is up to us as individuals to bring justice to our issues of concern and to the people by taking appropriate actions, including suing TRPA if it refuses to change in response to this information, and petitioning for court reforms, too. Requirements for “standing” to sue TRPA are in Compact Article VI(j). The more lawsuits filed the better for the people. The cost to file a lawsuit against TRPA is very low and whatever it costs to legally defend the claim(s) with a few briefings. This is not a legal brief or advice, though some legal briefs are attached. I am providing information in the public interest to empower people to act if desired.

My general summary ends here.

SUMMARY OF THE PETITION

This petition to TRPA can be framed as “**fully follow the Compact**” in both letter and intent. Is that too difficult, TRPA? Not in line with your own agendas? The Constitution safeguards in law “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” (Amendment I.) This is a petition seeking from TRPA a redress of grievances and I plan to speak before the assembled at TRPA’s March 26, 2025 Governing Board meeting. The grievances are with unconstitutional errors and deficiencies in the regulations TRPA has adopted and amended over the years. For the purposes of this petition, these are portions of the 718-page Code of Ordinances, or COO, and parts of the Rules of Procedure, or ROP. (To reduce quoted references herein to the Compact, COO and ROP, the current versions are online at https://www.trpa.gov/; hold the mouse over the “PLANS AND PROJECTS” link, and the clickable sublinks for pdf downloads are to the left under “Regional Plan.”)

What the Compact Requires

The comments in this section focus on simple, basic Compact requirements. After I discuss or cite the relevant parts I examine whether the TRPA regulations are in accord with Compact requirements and find they are not, in large part. I look at the Compact in terms of musts and mays; what shall TRPA do to fulfill its legal charges, and what is otherwise allowed. Let’s begin with the “shalls” (leaving out details).

- The TRPA Governing Board shall meet at least monthly and shall post public notice with an agenda of potential actions in advance.
- The TRPA Governing Board shall adopt ordinances (the COO) to implement the Compact, in accordance with prescribed environmental review and administrative requirements.
- TRPA shall prepare an environmental impact statement (EIS) for Governing Board consideration, in accordance with prescribed environmental review and administrative requirements, for all projects or planning matters not designated exempt, and for any COO or Regional Plan amendments; TRPA shall provide a publicly-noticed 60-day public comment period for any EIS, and shall respond to comments from government agencies.
- The TRPA Governing Board shall take action by a vote to approve or deny projects/permits or other matters (i.e., planning actions) after consideration at a public meeting, after making specific findings supported by substantial evidence, and after opportunity for public participation and testimony on the matter. TRPA Governing Board decisions voted shall be final "actions" and subject to legal action by any aggrieved person(s) under prescribed timelines to file court actions.
- TRPA shall provide public notice of adopted COO or amendments (for challenge noticing).

There are specific things TRPA may do as allowed by the Compact of relevance here:

- The TRPA Governing Board may designate classes of projects or activities which are exempt from TRPA regulations with supporting statements of evidence.
- The TRPA Governing Board may exempt certain classes of projects or activities from preparing environmental documents.
- The TRPA Governing Board can adopt rules or procedures to follow; once adopted they are binding on TRPA.

What TRPA Has Done: Subverting the Compact Under Color of Law

The TRPA Governing Board has illegally subverted Compact requirements and violated the rights of the people in a variety of ways, but mainly by illegally delegating functions specifically reserved for approval "action" by the Governing Board to the staff, including the Executive Director and others. The first thing to understand is Compact Art. I(c): "The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provision of this compact." There is further support for these concepts in case law, unneeded here due to the foregoing. (See Attachment 2, pdf p 10.)

The second thing to understand is that essentially all regulatory authority is held by the Governing Board under the Compact, with staff serving in a non-authoritative support role to bring permits, EIS, COO and Regional Plan amendments and approvals of all kinds before the Governing Board in the public forum. **The Governing Board is distinct from agency staff under the provisions of the Compact**. For that reason, the following provision of COO 2.2.2.G.1. is unlawful: "The Governing Board hereby delegates to the Executive Director the review and final action on all projects and matters not reserved for Hearings

Officer or Governing Board approval pursuant to subsection 2.2.2." The Compact does not empower the Governing Board to delegate "review and final action" to staff, to delegate the voting demanded of them in the Compact, but they did it anyway and have ever since that code was adopted.

TRPA's presumed way around this legal overreach was to adopt COO 2.2.2.G.3. providing for appeals: "The final action of the Executive Director or Hearings Officer may be appealed to the Governing Board pursuant to TRPA's Rules of Procedure. Final action of the Governing Board may be appealed to a court of competent jurisdiction pursuant to Article VI(j) of the Compact." The latter clause is in the Compact, and this is tom-foolery with legalese and "final action" language contrary to the Compact. We know TRPA is not a "court of competent jurisdiction" but it is further not even a competent administrative law adjudicatory body, being set up as a "kangaroo court" where TRPA acts as the prosecutor and judge. TRPA set up its "kangaroo court" as a barrier to freely addressing the Governing Board at a public meeting and to chill public participation. You can read more about the adverse consequences to the people from these violations of due process and civil rights in Attachment 2, pdf pp 22-25.

With the illegal delegation above, and through a standard legal trick, the Governing Board, enabled by staff, turned the Compact upside-down in equating the governing body with the staff *by regulatory definition in the COO*. Certain words and phrases are defined for TRPA purposes in COO CHAPTER 90. DEFINITIONS, including this word: "**Agency** The Tahoe Regional Planning Agency, including the Governing Board and staff." While that is an inclusive description, using "agency" and "TRPA" interchangeably in the COO to collectively refer to staff and the governing body as one and the same with regard to project or other approval authority, together with the illegal delegation provision, was all it took to subvert the Compact. And though it occurred decades ago, that doesn't make the definition *as applied* legal or effective. Rather, the illegal inconsistency voids all legal effect of the charade that such delegations of authority were lawful. The COO and ROP provide undeniable evidence that *in practice* this definition of "agency" is used to subvert Compact requirements.

That the illegal regulations have gone unnoticed or unchallenged to now is of historical relevance, but not relevant to the fact that that the regulations are unlawful and the TRPA staff and Governing Board is illegally violating the Compact to this day. Enabled by the Governing Board's illegal regulations, thereafter staff assumed the Governing Board's authority to approve projects, permits and matters at the staff level, projects and other matters reserved by statute to the governing body only to approve, and without public participation or meeting other administrative requirements in many, if not most, instances. With these regulations the TRPA became opaque and disappeared behind closed doors, and the staff has done that ever since while dispensing with rigorous environmental analyses required under the Compact. Low-level planners prepare documents for rubber-stamping by the Executive Director or Governing Board, leaving other agencies and the public out. If it happens that they bring the matter falsely before the Governing Board the public and other agencies are generally given seven days to comment, not 60 days or more as required under the Compact.

TRPA line-staff must think the regulations are just great, that they are protecting the environment and that everything is legitimate. I don't fault them; they don't understand the Compact and are directed to

follow the faulty regulations in any event, with the errors undetected in legal subtleties. The staff serves "at will" under NV labor laws and are told what to do. No staff would dare to go against the Board or Executive Director in any case; it would be career suicide. Many Governing Board members are attorneys, some high-level. I suspect long-time poker-faced lawyer-directors at TRPA Joanne Marchetta and John Marshall were fully aware of this fraud; they didn't enact it, but they were lie-yers who exploited it to their own ends. That pair deserves notoriety for continuing the illegal practices (or for negligently not seeing them). Sly and egregious are the regulations in their subversions of the Compact and Constitutional protections, *apparently* unnoticed for some 35 years or more—until now. Time doesn't matter; fraud vitiates all illegal regulations despite any implications. Ignorance of the law is no excuse.

Illegal Project Approvals in the Tens of Thousands

The illegal approval activity is accomplished without notice to the public or opportunity to freely address the Governing Board on a staff decision when requirements mandate a vote by the Governing Board for such project approvals under an item on the Governing Board meeting agenda, and only after opportunity for the people to be heard is provided at a public meeting concerning the matter under consideration. The regulations then set formidable barriers to challenging a staff decision in TRPA's quasi-adjudicative forum where they act as both prosecutor and judge in reliance on staff for illegal appeals I'll discuss later. The current fees to appeal an Executive Director or Hearings Officer decision amount to $1353, with 21 days to file a statement of appeal, an onerous burden on the appellant to chill public participation in decision-making (if they are somehow even aware of a decision).

Staff approves most projects and other matters behind closed doors with no public notice and, under their illegal regulations, they don't prepare an EIS prior to approval for most projects or matters. If a matter is brought before a Hearings Officer or the Governing Board for some reason, unless an EIS is prepared and circulated for review in advance, rather than giving the public 60 days to comment on an EIS, a total of seven days is provided for public comment on staff findings not supported by an EIS (a period typically from 5 p.m. Tuesday, one week before a planned approval, to 4 p.m. the day prior to the meeting the following Wednesday for comments to be considered). TRPA's favorite EIS substitute is called a Finding of No Significant Effect (FONZE), generally accompanied by an Initial Environmental Checklist (IEC), which is by no means functionally equivalent to an EIS.

Abuses of Exemption Authority

The TRPA has designated certain projects as exempt from it regulations, as the Compact allows with statements to support a finding of exemption. Most or all of these exempt designations were made long ago. TRPA also dreamed up a number of other *de facto* exemptions and quasi or "qualified" exemptions for activities that didn't fit in the exempted designations, without supporting statements, which the Governing Board then illegally enacted into regulations. TRPA then proceeded to illegally subvert Compact requirements by NOT preparing and considering environmental impact statements (EIS) prior to staff approval of any project not specifically and totally exempted from the TRPA regulations. In NOT

doing what is required, and coupled with the illegal regulations and practices described in the preceding paragraphs, TRPA has all but abandoned Compact requirements for environmental review of projects. TRPA has violated the rights of the people by depriving the public of meaningful opportunities to participate in decision making by the Governing Board prior to approving of project permits and other matters that have a significant effect on the environment. This occurs under the illegal regulations TRPA has adopted I discuss in detail later on.

Rules of Procedure Can't Be Applied to the General Public or TRPA Client

TRPA has illegally adopted rules for its own procedures that are purportedly applicable to the people with no legal authority to do so. The Compact requires the TRPA to adopt "its own" rules and procedures for how it will conduct business. To the extent the ROP TRPA established does anything more than that, such rules are without a basis in law, and are invalid with regard to applicability to the people. The ROP mirrors much of the COO and as such is riddled with errors and illegalities, and merely provides additional insight into TRPA's illegal practices with exemptions, environmental review procedures and staff-level approvals of various matters.

Legal Background for the Petition

TRPA has adopted regulations usurping the rights of the people, including myself, guaranteed by the U.S. Constitution. An act against the Constitution is void, having no effect. There is ample precedent in Constitutional law that regulations adopted by an agency of the Executive branch of government under a Congressional statute establishing or otherwise legally binding on the agency that are contrary to the letter, legislative intent or construction of the statute are prohibited. (See Attachment 2 pdf pp 10-12.) Usurpation is an invasion and trespass of the natural and inalienable rights of the people and such laws thereby inevitably cause harm. The nation's founders warned the people to beware of usurpation with the greatest priority.

Below the supreme *law of the land* is statute law adopted by the Legislative branch and executed by the President's signature. The Tahoe Regional Planning Compact is such a statute. The bi-state Compact is essentially a contract agreement between the governments representing the people of the states of California and Nevada, and the United States government (which manages approximately 75% of the land in the jurisdictional area of the Lake Tahoe region), as ratified by the President. The state constitutions also enumerate specific rights of the people, whether based in natural law or otherwise, the federal government may not usurp. In entering into the Compact the states have not abrogated the rights of the people under common law and state constitutions or the duties of contractually-employed state-government agents and appointed and elected servants of the public.

The writings that follow are a commentary based on a review of the TRPA regulations with respect to the Compact. The COO is the *coup* that begins the revolution to overturn the legislated requirements of the Compact, turns them upside-down. The ROP then codifies practices and procedures that ensnare and entangle the public in its regulations, with TRPA often tripping over its own ROP in confusion and nonetheless disenfranchising the public from decision-making by following its erroneous regulations.

While TRPA has no legislative authority, once adopted its regulations are considered federal laws, with TRPA a somewhat-unique federal agency in the branch of the Executive. The law of the land prohibits appointees operating under the Executive branch from adopting unconstitutional regulations that subvert the statutory requirements of the Legislative branch. Such is against checks to balance the powers among the three (only) branches of federal government. However, that is precisely what TRPA has done in the instances that will be presented briefly below.

Court-Enabled Subversion and the End of Agency Deference

The TRPA and others in federal government agencies have been enabled in their subversive actions by a federal court system bound to act erroneously and unconstitutionally under a recently-reversed U.S. Supreme Court doctrine known as "Chevron deference," from a case originally involving the USEPA against the oily giant. See https://libertyjusticecenter.org/pressrelease/u-s-supreme-court-overturns-chevron-doctrine-the-liberty-justice-center-praises-supreme-courts-decision-to-roll-back-administrative-states-power/ for an overview. The ruling in support of USEPA opened a door which the agencies put their fat foot into: that with few exceptions, judicial "deference" should be given the agency, with the courts having no role in judging "substantial evidence" or whether agency actions constitute a "prejudicial abuse of discretion." Agencies were free to impose their own interpretations of the agency's applicable statutes and regulations. As to the courts, the statutes and regulations meant whatever the agency decided they meant if there was any ambiguity in the statute, and applied in whatever way the agency thought was best. Judges left the judging to the agencies, and thereby left rogue appointees to run amuck with court assurance. "Substantial evidence" was anything amounting to "more than a scintilla" of information put forward by the agency, an open invitation for "junk science" (which TRPA swallows whole).

Good news for the people: The situation is now reversed, insofar as the Chevron doctrine was applied to the judicial review standards under the Compact (Art. VI(l)(5)): "Prejudicial abuse of discretion is established if the agency has not proceeded in a manner required by law or if the act or decision of the agency was not supported by substantial evidence in light of the whole record." (emphasis added). The emphasis is because violating the law is exactly what TRPA has done, and then exploited the deference doctrine numerous times to shield it from accountability for its deficiencies, only to repeat its errors, law and "substantial evidence" be damned. That deference shield now has a gaping hole and no handle to grasp.

In turn, the Legislative branch was likewise in no way accountable for agency oversight and was perhaps too happy to let that go while they passed the gigantic public hat around and thence to TRPA. The Department of Government Efficiency has recently shown Congress is little more than a pump for the money laundry, kickbacks no-doubt included. The Chevron "ruling" was a mere footnote in the case but some four decades ago unleashed the "fourth branch of government," the so-called unelected Administrative State. It wasn't hard to see the outcomes with appointees to the federal court unilaterally bound to overlook the legal failings of the appointees to the federal agencies. They have double-teamed against the public ever since with Congress and Executive standing idly by. The gigantic

legal brains deciding Chevron and thereafter couldn't foresee that? No; it's part of a plan. The founders established the courts to protect and serve the people, but that has been subverted so the federal judges appointed for life are little more than corporate secret-agents fleecing the public for their own purposes. More charades, no honors for those judges serving in the federal systems of government.

The Supremes overturned the "Chevron doctrine" of deference in latter 2024, too late for my case. In overturning the rulings of their predecessors all federal judges were given blanket immunity for their decisions under the Chevron doctrine, no matter the harms. Such is their way. "Oops; the prior Supremes got it wrong! We reverse!" Now President Trump is busy dismantling the Administrative State and aspects of the secret-agency Security State, the "weaponized" systems of injustice known as courts still abusing him and other people like myself, and interrupting other criminal enterprises. To quote **President Trump before a joint session Congress, March 3, 2025, "My administration will reclaim power from this unaccountable bureaucracy, and we will restore true democracy to America again. And any federal bureaucrat who resists this change will be removed from office immediately, because we are draining the swamp. It's very simple. And the days of rule by unelected bureaucrats are over."** If so, these are long-overdue actions and the Trump administration is making good progress on some important things from my limited perspective. Only time will tell, but President Trump has a specific interest in the TRPA; he is entitled to appoint a new member to the TRPA Governing Board. I'll leave it at that for now.

It has become apparent to me that TRPA, the people making up the agency, that is, and I share a fundamentally different view of government. I stand on foundational principles of Constitutional law. My views are largely informed by and in concert with the writings of the nation's founders, the signers of the Constitution and others involved, concerning federalism and government overreach. Grade-school civics teachers taught that the people were endowed with inalienable rights under the Constitution but seldom spoke of how to enforce such rights against bullies and tyrants from within. TRPA has turned out to be exactly the kind of tyrant the nation's founders warned of in their admonishments to the people that they will need to maintain a vigil against federal government intrusions and subversions that would do their worst to impose rules in their interest, and against the rights and interests of the people. Could they have ever dreamed of the TRPA abuses we'll explore? Yeah. TRPA is but a puny tyrant, the well-meaning personnel mostly ignorant of their failings. TRPA behaves as a tyrant nonetheless and the personnel involved deserve to be called out for the abuses they support until the abuses end.

The People Get the Government They Are Willing to Stand For

TRPA is an agent of the people and nothing more. Its appointees are public servants on the public payroll (our money) or serving voluntarily in so-called "positions of honor," but with NO OATHS subscribed. It is the duty of every person who supports the Republic and Constitution to resist such tyrannical governmental intrusions and usurpations against rights by any means necessary, including civil disobedience of the laws where, in the judgment of an informed person, such laws are unconstitutional. I'm just paraphrasing the nation's founders. While the founders did not expect the

violators to be talked out of power and repent of their evils based on their own self-interested views and desires, they nonetheless had to be opposed by an empowered, informed populace in order to grant the opportunity for repentance and grievance redress before resorting to other means.

The mainstream media has utterly failed the founders' ideals in its role as government watchdog so people are tuning out and turning to other sources of information such as expert opinion, literature, *uncensored* podcasts, net info, tik-tok, etc. People are able to inform their own narratives to overcome the most polluted resource, the mainstream media "news," including institutionalized, socialized, high-jacked and controlled "science" reporting. Mainstream media outlets are misinformers, real journalism is almost defunct, with an occasional notable exception with regard to Lake Tahoe, e.g., reports on microplastics. Maybe President Trump, Congress, or the States will interrupt TRPA illegalities? If not, it will be up to the people and I challenge any competent attorney seeking a cap-feather and worth their salt to step onto the field and take this sickly Goliath down using the groundwork I'll prepare. "When tyranny becomes law, rebellion becomes duty." – Thomas Jefferson

Some notes on my lawsuit, Miller v. TRPA: In late 2022 I appealed a TRPA Executive Director decision for faulty administration of ground water protection requirements in TRPA's COO, and subsequently sued TRPA (the corporate entity) for its approval and egregious actions against my civil rights during the appeal hearing. Nonetheless, the main reason I sued TRPA was to elevate issues of concern to me with microplastics in Lake Tahoe that were a result of environmental mismanagement by TRPA and other "partner agencies," with TRPA leading at the helm. I spoke of these matters at my September 22, 2022 appeal hearing before the TRPA Governing Board (and many times since), saying the deteriorating marinas and piers TRPA and its partner-agencies have negligently approved for recreational boating over the last three decades will only worsen the microplastics problems if ignored. Likewise the fake-pine cellular macrotowers TRPA is so fond of are significant industrial sources of microplastics. TRPA and the others in the administrative state have nonetheless ignored the matters and continued the destructive policies while staying silent to the issues. They simply pretend to care when they opine at all, and support wasting substantial public funding in further expensive and fruitless study of the microplastics issue—in the absence of *any* plastic control policy. TRPA is a planner without a plan, a regulator without a regulation.

I offered to settle my lawsuit if TRPA would only listen to reason and begin to address the microplastics issues through proper planning and regulation. TRPA stupidly refused to even discuss my settlement offer. I write that because had they settled then nothing printed here would have likely emerged, and I would have gone on to other things instead of figuring out major portions of the TRPA regulations are an absolute fraud. Over the course of my lawsuit in 2023 I began to unravel the regulatory subterfuges, but these were only tangentially related to complaints lodged with the court. The corrupt judges, seeing the TRPA mess before it and no easy way out were certainly not going to be the ones to call TRPA on their faulty regulations, or anything else—in response to a citizen with no attorney? So they dismissed without substantial comment, the rushed magistrate judge's findings most-likely prepared by an intern and not even proofread based on the numerous errors.

That is in keeping with their profession. While I've known and befriended some good attorneys, this is what I've heard about the federal judges: They serve a corrupt corporation and are outside of their corporate D.C. jurisdiction, running a scam. Cases are decided upon assignment and judges receive payments from citizen trust funds to offshore accounts to decide the cases as instructed. When an attorney figures out where the real money is, they go for a lifetime appointment as federal judge, where the corporate payouts are. There is nothing neutral about their judging. Cases are ultimately decided on appeal (more of the same), subject to appeal to the Supreme Court, which latter only "hears" 1% of cases brought before it, almost always political-issues cases. That is the American injustice system of stacked cards. The judges in my case should be impeached. See Attachment 3 for my critique, esp. the concluding remarks at pdf pp 24-25.

If so, why sue TRPA? There are many reasons. Federal courts are not needed; suits can be brought in other venues. There is always potential to win on the merits properly litigated and strengthen case law. My case was a practice run, my first lawsuit, and as a *pro se* unaided by attorney. I learned a lot. Exposing injustice was among my aims; I never really expected to win in the corrupt court. It was a test of sorts and the court corruption exceeded my wildest expectations. Getting TRPA to respond on the record is another; I've found that is the *only* way. Understand that if TRPA doesn't respond to a lawsuit, it loses, and it takes funding and staff time to defend itself. With major federal workforce reductions likely coming soon, TRPA can choose whether it wants to spend its limited resources that way and battle everything out in court, defending its resistance to changing it illegal regulations and practices, or take an easier route that would assist in its purported mission as charged under the Compact. TRPA can be sued in state courts as well, and those properly represented may fare better there than in my own case. Perhaps the corruption in the courts may change with the swamp drainage? I could go on . . . the main point is "jawboning" TRPA won't work. Trust me on that. I attempted to promote change that way in 2024, and long before that, which only led me to this petition. TRPA is righteous, entrenched and recalcitrant in all respects. That's the deep state of affairs.

I have attached certain of my filings from *Miller v. TRPA* here and in other comments for the TRPA record. I have not provided TRPA's court filings because they are mainly comprised of lies stating what they are *supposed* to do under the law, and claiming that's what they do, when the facts are obviously otherwise. My filings present clear refutations of their arguments and I see no point in further misinforming the public with TRPA's twisted lies. (Anyone interested may contact me to request info.) Deference was all TRPA had, their ace. TRPA could always pipe up and refute me, but they won't. TRPA personnel can't be proud of their "win" in service to the notoriously-corrupt telecoms, poisoning the public and environment with electromagnetic radiation and microplastics as it does. I will cite to certain sections of my filings and nonetheless encourage a full reading for a better understanding of the Tahoe Regional Plastics Agency.

WHAT'S WRONG WITH THE TRPA?

Referring again to the oath failures, TRPA is a brazen scofflaw based on my lawsuit and the writings here. I suppose those appointed to serve the corporation think they can't be held accountable for

criminally violating the Constitution because they haven't subscribed to the federal oath or were ignorant of the law. That may be, but serving without an oath to violate guaranteed civil rights acting "under color of law," whatever that law may be, in an effort to defraud another, is a felony act. It's Catch-22; appointees should have read closer, should have read my writings. In January 2025, following my comments in writing and testimony at the Governing Board meeting, the Governing Board unanimously reaffirmed its felonious commitment to continue to violate the federal oath requirements. It's an unwritten code of conduct for criminals TRPA follows. The facts are that many TRPA Board members are high-level attorneys and I expect claiming ignorance of the laws will rightly go hard on them if the tables turn, as indeed they appear to be turning. They want the people to think skipping the loyalty oath doesn't matter, or believe they are beyond the reach of the laws or can escape by some other subterfuge.

I assert they could not be more mistaken for failing completely and deliberately in such a simple matter as taking an oath to protect the Constitution. Oaths matter. President Trump and his Justice Department appointee Pam Bondi have sworn oaths to defend the Constitution against all enemies. Whether TRPA is an enemy of the Republic or supporting globalist enemies is not my place to judge. This information is essentially my affidavit, attesting to the facts behind violations of law to the best of my knowledge and belief, without intent to deceive, and otherwise freely expressing my views under the protection of the First Amendment.

While TRPA is not immune from prosecution, there are worse criminals being rounded up, no denying. Killers. But TRPA and its partners, namely the City of South Lake Tahoe and Verizon Wireless, wrote off the life of David Benedict to promote its EIS-exempt wireless communications agenda with the telecoms, and David is dead now—while under his heirs his case has languished for four years in federal court. Lake Tahoe drinking water has become contaminated with toxic microplastics under TRPA's watch, and due in part to TRPA's negligent, illegal actions, which continue. A lot of money has been spent with no tangible improvements in Lake water quality. New Trump administration priorities may put TRPA down the line? Maybe the oath violations, other criminal conduct, will blow over unnoticed . . . or the U.S. Justice Department will sort it out . . . or who knows what? Perhaps, a shared prison cell in a foreign country waits for TRPA's corporate actors? I'd be nervous in their place, many potential prosecutorial avenues.

IF IT'S BROKEN, FIX IT

My lawsuit presented evidence, in 2023, that TRPA has long-ago developed regulations which usurp Compact requirements with regard to the manner in which projects that are <u>not</u> exempt from TRPA regulations are approved. Most notably, the regulations illegally deprive the public of the opportunity to address the Governing Board at a public meeting for most projects or other matters that have an effect on the environment absent a costly appeal, as discussed also herein. The corrupt corporate judges failed to act on the matters, without comment, enabling their federal "partner." And yet it is black and white in the law and you don't need a law degree to read it: Such project/permit approvals are to be granted by a vote of the Governing Board only after a detailed EIS is prepared, considered and certified to be in

accordance with the Compact requirements. Approvals must take place at a public, noticed, meeting with opportunity for the public to freely address the Governing Board. Though the case was not initially on these above matters, my lawsuit addressed them in some detail; see Attachment 2 pdf pp 10-12. TRPA has taken no steps to date to change its illegal practices in this matter and must now undertake steps to resolve the grievances herein.

That would be a mere start on what is needed. Since the environmental review is to precede the approval I'll first show that TRPA has completely subverted the Compact through its illegal regulations for environmental review of matters that have an effect on the environment and return to the public hearing and voting/approval requirements later. I also think it's helpful to understand the Compact's environmental review framework as I do before examining how TRPA has illegally twisted the framework to serve its own ends. The illegal regulations must be jettisoned or changed to comply with the Compact; that is my demand of the public servants. Are they servants or traitors? Only actions matter and all can decide by the actions and inactions of TRPA in light of what follows.

Environmental Review Mandates; TRPA "Shall" . . .

The basics involved here are relatively simple, and have been obscured by the illegal regulations adopted by TRPA. **There are identified in the Compact two general classes of projects or other matters: those "matters that have a significant effect on the environment" and those that do not.** The latter are to be specified as "exempt" in the COO, after making appropriate findings. Wherever the word "shall" appears that is a requirement of law not subject to agency discretion. The manner or rules under which the requirement is presented to the Governing Board are in the domain of the ROP, which can't legally deviate from the Compact. Compact Article VII lays out the EIS requirements.

> ARTICLE VII. – ENVIRONMENTAL IMPACT STATEMENTS
>
> (a) The Tahoe Regional Planning Agency when acting upon matters that have a significant effect on the environment shall:
>
> (1) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;
>
> (2) Prepare and consider a detailed environmental impact statement before deciding to approve or carry out any project. The detailed environmental impact statement shall include the following: .
>
> (A) The significant environmental impacts of the proposed project;
>
> (B) Any significant adverse environmental effects which cannot be avoided should the project be implemented;
>
> (C) Alternatives to the proposed project;

(D) Mitigation measures which must be implemented to assure meeting standards of the region;

(E) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

F) Any significant irreversible and irretrievable commitments of resources which would be involved in the proposed project should it be implemented; and

(G) The growth-inducing impact of the proposed project;

(3) Study, develop and describe appropriate alternatives to recommended courses of action for any project which involves unresolved conflicts concerning alternative uses of available resources;

(4) Make available to States, counties, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the region's environment; and

(5) Initiate and utilize ecological information in the planning and development of resource-oriented projects.

I will draw out a few points for the reader: The Compact requires an EIS for any project not on the adopted "exempt" list in the COO. It is by that codified listing, right or wrong, the public can identify the projects or matters that TRPA asserts will not have a significant effect on the environment. All other projects or matters have a significant effect (by the agency's own determination) and must therefore have an EIS prepared *in the manner specified above* for consideration prior to approval. Authority for exemptions to the EIS requirement is provided in the Compact Article VII(f):

> The agency shall adopt by ordinance a list of classes of projects which the agency has determined will not have a significant effect on the environmental and therefore will be exempt from the requirement for the preparation of an environmental impact statement under this article. Prior to adopting the list, the agency shall make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment.

Note for subsequent reference the Compact says "a list," not two lists or five lists or lists sprinkled throughout the 718-page COO, or undisclosed lists in Memoranda of Understandings with other public and commercial entities. If a project is not on the "list" of exemptions, impacts are presumed significant unless and until vetted through the EIS process, after which impacts may or may not be deemed significant, with this part of Compact Article VII applicable in any case:

(d) In addition to the written findings specified by agency ordinance to implement the regional plan, the agency shall make either of the following written findings before approving a project for which an environmental impact statement was prepared:

(1) Changes or alterations have been required in or incorporated into such project which avoid or reduce the significant adverse environmental effects to a less significant level; or

(2) Specific considerations, such as economic, social or technical, make infeasible the mitigation measures or project alternatives discussed in the environmental impact statement on the project.

TRPA is empowered to amend their regulations after adoption at a public meeting and meeting other administrative requirements, as it has done many times. TRPA may devise alternative procedures that faithfully implement the Compact requirements and shall implement the Compact in the meanwhile to resolves the grievances presented here or TRPA may face potential adverse actions at any time.

Grievances with the Code of Ordinances

TRPA has operated a sham regulatory program under the COO since at least 1990, before the time I moved to the basin. I will examine the regulations TRPA has adopted to implement the EIS requirements and show that they are nothing but an illegal and illusory protection program accompanied by usurpations of the rights of the people. I'll discuss the seemingly easier part, the exemptions from EIS requirements. These are contained in COO 3.2. First note in COO 3.2 that TRPA added the word "may" to precede the wording from the Compact, "have a significant effect on the environment." Again, the purpose of environmental review and EIS approval is to reduce any significant effects that "may" occur from projects that have been identified to "have" significant effects, so that approved non-exempt projects will not have a significant effect on the environment (that is, in the absence of over-riding considerations under Compact Article VII(d)(2) cited above).

Instead of following the Compact's EIS requirements, TRPA concocted a lesser, tiered environmental review system for every project or matter that was already determined to have a significant effect on the environment (and therefore requires an EIS). This illegal review system is complete with **staff-level permit approvals under the deficient regulations and illegal delegation for projects with effects deemed less than significant only by planning staff's unchecked determination of "no significant effect" in the absence of an EIS, the absence of public notice or public or agency input, and without opportunity for a public hearing and a Governing Board vote as required**. These illegal permit approvals by staff have been given without public scrutiny for tens of thousands of projects or more over the decades. The Executive Director and Hearing Officers are included staff and have no authority to approve of projects that may have significant effects. They act only improperly "under color of law." The Governing Board never had any legal authority to delegate to subordinate staff the approvals Congress mandated of them alone, to provide a modicum of transparency and accountability—which have been long gone.

Such staff-level approvals are wholly inconsistent with the Compact and unconstitutional, null and void. Under this system TRPA staff not only does not require or prepare an EIS for consideration by the Governing Board prior to project approval at a public meeting but, under its internal reviews, gone are the requirements of Compact Art. 1(a)(2) and all the rest of Article 1. Such approvals are illegitimate under illegal delegations of authority put in the regulations by the Governing Board that disenfranchise the public with respect to participation requirements. The Governing Board has illegally delegated most of its responsibilities to the staff and thereby deliberately avoids and prevents public participation, with no notice to the public, and also thereby relieves itself from public scrutiny and accountability for their votes, which are seldom needed or taken under the illegal procedures TRPA devised.

EXEMPTIONS

Exemptions in the Code of Ordinances

Compact Art.VI(a) (paragraph 2) provides that: "The agency shall prescribe by ordinance those activities which it has determined will not have substantial effect on the land, water, air, space or any other natural resources in the region and therefore will be exempt from its review and approval." (emphasis added to distinguish exempt from preparing an EIS, as follows.) Compact Art. VII(f) bears repeating here: "The agency shall adopt by ordinance a list of classes of projects which the agency has determined will not have a significant effect on the environmental and therefore will be exempt from the requirement for the preparation of an environmental impact statement under this article. Prior to adopting the list, the agency shall make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment." (emphasis added) Again, the requirement is for one list (non-plural) of classes of projects exempt from EIS.

"Review and Approval" Exemptions for "Activities"

TRPA's COO therefore includes a long list in COO 2.2 of project types and activities that are not exempt from EIS consideration and TRPA review and approval. However, these include many project types reviewed only under the illegal Hearings Officer or staff approval set-up for all projects erroneously listed as not required to be considered and approved by the Governing Board. While review is specified, these provisions for staff approvals are in direct contravention of the Compact (e.g., Art. VII(b) and Art. III(g)(2)).

Then COO 2.3 provides a long list of "exempt activities" not required to undergo "review and approval" pursuant to Compact Article VI(a). That list is clear. But then COO 2.3.6. provides another list for many "Qualified Exempt Activities," which are activities that are exempt by applicant certification that certain requirements are met. This language is a legal artifact TRPA inserted in the regulations that is very questionable as to whether the activities are exempt from "review and approval." What TRPA has done is to undermine and distort the conjunctive use of "and" in the Compact's use of the phrase "review and approval," terms that go together in normal grammar. Again, TRPA's Governing Board must "review and approve projects" that are not exempt, with the approval of necessity following the review. The Governing Board may also decline to approve a project through its voting. I think of it this way: So-called

"QE" activities are certainly not exempt from review, a review which is not conducted before the Governing Board or public. TRPA requires an application and substantial fees for review in the TRPA Fee Schedule, $226 for non-shorezone projects, $385 for review of a shorezone certification. These are not simple filing fees, but are to cover review costs. This is where TRPA begins to split hairs with "and."

Staff may review these QE applications to verify whether they meet criteria in the regulations adopted by TRPA to qualify for an exemption. Staff may disapprove a QE application based on their review but, absent a disapproval or the addition of special conditions by the staff ED, the project can proceed by operation of law—without an "approval" by staff because such "approval" was presumably granted by the Governing Board in adopting the regulations. Whatever authority has been delegated to add additional "special conditions" to a QE certification application is without basis in Compact law, underwent no Governing Board review, no public disclosure, no EIS, etc. In addition, the regulations may be faulty if TRPA didn't adopt the regulations after Governing Board approval of an EIS to evaluate potential impacts, or at a minimum as required under the Compact, based on a written finding supported by substantial evidence in the record that each class of projects (and "special conditions") will not have a significant effect on the environment. It would take historical research to know and given these are generally minor activities with limited, purportedly "non-substantial" impacts, is not of primary interest here in light of other issues, but the QE list is long, and I doubt they meet Compact legal requirements for exemptions.

More Exempt Activities: If you thought we were done with exemptions from review and approval, you'd be wrong. More lists: COO 2.5 and 2.6 provide for the MOUs parroted in the ROP, and these also include exemptions from TRPA review and approval which I discuss further on. See COO 82**.** COO 82.5.6 augments the COO 3.2 EIS exemptions I discuss next, purporting that the cited activities are exempt from environmental review requirements. The activities are not in a class of projects tied to COO 3.2. as they must be for EIS exemption, and no authority in law is cited for the EIS exemptions in COO 82.5.6 so this is another whole list of QE activities and projects (11 additional categories including structures in lake and shore areas) for which TRPA has determined, "No TRPA review and approval is necessary for the following activities if the activity fully meets one or more of the categories in this section and the applicant files a properly completed TRPA Qualified Exempt declaration form pursuant to subsection 2.3.7 with TRPA at least five working days before the activity begins." This text is just inserted into COO 82.5.6 without citing authority in law to do so or any recognition of inconsistency with Compact EIS exemption requirements, and no cross-reference to COO 3.2.2 requirements or lists, discussed next.

EIS Preparation and Approval Exemptions for Specified "Classes of Projects"

TRPA then presents a short list of exemptions to the EIS requirements in COO 3.2.2., "Article VII(f) of the Compact requires TRPA to adopt by ordinance a list of classes of projects which TRPA has determined will not have a significant effect on the environment and therefore shall be exempt from the requirement for the preparation of an environmental impact statement." Briefly, single-family housing, changes in use with increases less than 650 vehicle miles traveled, and transfers of development rights are excluded from preparing an EIS. These are the only COO exemptions specifically linked to Article

VII(f) authority I've located. Prior to adopting the list in COO 3.2.2, did TRPA make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment? Presumably, but that's another research project.

Everything that follows COO 3.2 in articles COO 3.3 through COO 3.6, to exempt projects from EIS requirements, is illegal. The Compact provides no provisions authorizing such stated environmental reviews and approvals by staff in back rooms or staff Hearing Officers in lieu of EIS. We have to go to the ROP to see what TRPA does procedurally with the application information under the bogus COO provisions. Besides that, one may expect that all the exemptions would only be in COO 2.3 (for "review and approval") and 3.2.2. (for EIS). Such is not the case for the latter, far from it, as I'll go on to show.

In the very next section, COO 3.3 goes awry, stating, "Except for planning matters, ordinary administrative and operational functions of TRPA, or exempt classes of projects, TRPA shall use either an initial environmental checklist or environmental assessment to determine whether an environmental impact statement shall be prepared for a project or other matter." **What's that written?!** What does the COO mean with "whether" an EIS shall be prepared? That's nonsense when, in fact, the Compact requires an EIS "shall" be prepared. The Compact trumps. There is no agency "discretion" to do these other things, except perhaps as preliminary actions to prepare and present a mandated EIS to the Governing Board for approval.

In addition to project approvals, I have also observed the TRPA IEC or environmental assessment (EA) is used routinely for approving a large variety of "planning matters," in violation of the environmental review requirements. In most cases a checklist staff assessment will be prepared for Governing Board consideration with the Governing Board deciding the matter only on the basis of staff input and giving the public (typically) seven days for review and comment or oral testimony. In some cases a hearing is held by the TRPA's Advisory Planning Commission, also typically with seven days to comment. The APC is a group of unelected appointees the TRPA established to make advisory recommendations. The APC and staff then make its recommendations to the Governing Board under the faulty review requirements. The Governing Board nearly-always adopts the staff recommendation. Again, everything works to empower TRPA while excluding or minimizing EIS burdens, and comments and testimony from others. You don't like that? TRPA will see you in court or not at all.

TRPA invented all of the illegal environmental review and staff-level approval regulations in COO 3.3 through COO 3.6 for its own convenience, and has approved tens of thousands of projects under the bogus procedures over the last several decades or more. I shall later shed light on why this approach has failed to protect and restore the environment of the region and Lake Tahoe water quality and clarity, as there is a direct connection, if you can't already see it.

I wrote above that TRPA made up the environmental review procedures it follows, but they look an awful lot like project review requirements under the California Environmental Quality Act, or CEQA, which is a tiered system of review. Without making a direct comparison of TRPA regulations with CEQA requirements and guidelines, I am simply asserting CEQA was heavily plagiarized and adopted as the

hybrid regulatory model for TRPA, without reference and despite failing to comply with either Compact requirements or CEQA requirements.

TRPA is not bound by CEQA, or any requirement for environmental review in Nevada law. Similarly, TRPA is not bound by its federal counterpart the National Environmental Policy Act, NEPA, though it is my view that NEPA case law precedents may be applicable to Compact decisions, at least in some cases. TRPA is bound by the Compact and its EIS requirements. TRPA and CEQA came into existence in the same general (1970) time period, as did NEPA. I suppose that TRPA looked around for a comprehensive environmental review model, cherry-picked and adapted the parts of CEQA and NEPA it liked, discarded the rest and cut the public out of the processes it adopted under the COO and ROP based on my analyses here.

Grievances with the Rules of Procedure

The above-cited Compact requirements are clear. TRPA was charged to develop the COO regulations to implement the statutory requirements of the Compact, and fell woefully short as described above. Compact Article II(g) specifies the following at the end of text on TRPA Governing Board voting and general business provisions, "The governing body shall adopt its own rules, regulations and procedures." The purpose of the ROP, as I see it, is to describe the processes TRPA will use to implement the COO in a public document binding on the agency, and that provides transparency and accountability to the public for its operations.

My view of the ROP with regard to the Compact is that TRPA has acted beyond its authority under color of law in adopting the ROP. ROP 1.1. provides the "PURPOSE OF RULES These Rules supplement, interpret, and implement both the [Compact and COO]. These Rules should be read together with those documents." In the first place, TRPA doesn't "read together" those documents, with staff generally relying on the deficient COO and ROP to the general exclusion of actually implementing the Compact language. This is most often with vague references and meaningless assertions included that TRPA is implementing the Compact when it isn't, under fraudulent environmental and public review requirements, as shown herein.

Further, while TRPA may "interpret" the requirements and allowances in the Compact language, it can't change the Compact requirements in a manner contrary to the letter or intent of Congress and the two states. Nothing in the Compact, COO or ROP indicates TRPA may "interpret" the requirements in a manner inconsistent with the Compact accompanied by violations of civil rights for the sake of agency convenience or to expedite agency approvals of matters that have a significant effect on the environment. The opposite, "accordance," is specified in the Compact. Yet this is precisely what TRPA has done for decades and that is how the court erred by applying the Chevron doctrine of deference to TRPA in my case involving TRPA's failure to implement ground water protection requirements. This document so far shows and will further show that the COO and ROP do not faithfully "implement" the Compact, as my lawsuit also showed. TRPA went it own way with the COO and ROP without due regard

for the Compact. The ROP is not needed to *misinterpret* the Compact's crystal-clear EIS requirements. There is no ambiguity in the Compact, which is comparatively well-written and considerate of civil rights.

TRPA may adopt ordinances under the Compact provisions which are binding on the public and the agency, as for instance when one submits an application for a permit to be contractually bound, in essence, by TRPA requirements. To the extent the ROP includes requirements within "it's own rules" that are presumably binding on the public, I don't think they are valid. Examples are ROP 14 "HEARINGS OFFICER" and ROP 11 "APPEALS," with many requirements and references in the latter to "the appellant shall . . . ." There is no legal justification for either of these ROP Articles. Insofar as the 71-page ROP is *largely duplicative* of the extensive 718-page COO, it adds another layer of unneeded regulatory complexity (e.g., for the people) and invites inconsistencies with the COO. I suggest incorporating all public (e.g., permit) requirements in the COO, and revoking the ROP or redeveloping it for internal processes binding only on the agency governing body, consistent with the Compact and COO. The ROP is not required or needed. Worse than that, I have identified many other aspects of the ROP, not only ROP 11 and 14, that are illegal and which violate the rights of the people, as I'll discuss below. President Trump is calling for rolling back federal regulations 10 to 1. Here is an opportunity.

ENVIRONMENTAL REVIEW PROCESSES USED BY TRPA

Illicit EIS Exemptions in the ROP; Memoranda of Understanding

I next refer to the COO-duplicative ROP for additional purported exemptions from Compact EIS requirements and will mention here that many projects are improperly exempted from the TRPA review and approval, and therefore EIS requirements, under various interagency agreements or memoranda of understanding, as noted in ROP 5.4 ". . . Minor application procedures do not apply to permitting that has been delegated to another agency pursuant to a Memorandum of Understanding (MOU)." I will comment more on these MOU documents another time; it is another review project to ferret out all the exemptions and other regulatory failings in the many MOUs. For example, I have seen at least one MOU purporting that a signatory agency can be deputized to carry out and enforce TRPA's regulations, with no basis in law for that. Only TRPA can legally enforce TRPA requirements under the provisions of the Compact; each agency must enforce its own requirements. Anything else is bluff or coercion.

TRPA is allowed to enter into MOUs with other agencies. However, TRPA can't illegally delegate TRPA environmental review requirements to another agency by MOU or otherwise, or rely solely on environmental documents prepared by another agency. My main comment on the MOUs at this time is that many are outdated or otherwise invalid; they should expire after five years unless renewed at a public meeting with full opportunity for public participation and an EIS, appropriate because the MOU matters are not exempt under the Compact's EIS and project or planning matter approval requirements.

So-called "minor applications" (ROP 5.3) are projects for which the TRPA timelines to act are shortened, with other review requirements reportedly applicable; these are projects and activities which are not identified as "exempt" from EIS requirements and which TRPA nonetheless does not prepare EIS documents for. Then we come to this ROP article, which recites COO 3.2:

6.3. PROJECTS EXEMPT FROM ENVIRONMENTAL DOCUMENTATION

Pursuant to Article VII(f) of the Compact, the Board may determine, by ordinance, that certain classes of projects will not have a significant effect on the environment and, therefore, are exempt from preparation of environmental documentation.

6.3.1. Such exempt projects are set forth in subsection 3.2.2 of the Code.

6.3.2. TRPA need not prepare environmental documentation on a TRPA decision to reject or disapprove a project or matter.

ROP 6.3.1. supports the 3.2.2 exemptions but not the other exemptions to EIS requirements in the COO including, but not limited to, COO 82.5—which appear to have no basis in law. My reading is that EIS exemptions only apply to projects in COO 3.2.2, as tied to Compact Article VII(f). TRPA has abused the "exemption" laws in all sorts of ways, and has conflated "review and approval" and/or "activities" exemptions with "EIS" exemptions.

All the rest of the ROP concerning Hearings Officer (ROP 11) and Executive Director approvals (generally by line-staff in the absence of any hearing), language about "whether" or not to prepare an EIS, and references to "final action" by staff is all a ruse in violation of the Compact requirements and without veracity or force of law. The regulations and violations that usurp the rights of the public with regard to these parts of the ROP were fully briefed in my lawsuit (e.g., Attachment 2), with relevant filings attached and incorporated herein by reference. These writings extend the analysis therein to requirements to prepare EIS documents.

TRPA's Illegal Environmental Review Procedures

COO 2.2 "PROJECT REVIEW" provides the illegal set-up, implemented specifically in ROP 2.2.1:

> "Activities that may have a substantial effect on the land, air, water, space, or any other natural resources in the Tahoe region are projects subject to TRPA review and approval. Projects shall be reviewed by TRPA in accordance with TRPA's Rules of Procedure and pursuant to the applicable Code provisions. Projects approved by TRPA shall be issued permits in accordance with the Rules of Procedure."

Nothing about the Compact here; the COO supersedes it by implication. The COO is like TRPA's Holy Bible. Article 2 goes on to provide provisions for illegal approvals by a staff Hearings Officer in many instances, which are parroted in ROP 11. Thus, the staff and everyone else are misguided to follow the corrupt regulations.

As corrupt and deficient as the TRPA regulations may be, the manner in which TRPA carries out its approvals and the levels of analysis provided are even more dismal. I'm just going to give a general overview applicable to most permit projects. The action begins with a permit application to TRPA, and among the application requirements is for the Applicant to prepare and certify an IEC, for review of

potential adverse environmental effects, discuss any mitigation measures to prevent or minimize such effects, and certify the truth and accuracy of the checklist information to the best of their knowledge, under penalty of perjury. Literally anyone can prepare and submit an IEC. No expertise of any kind is required.

TRPA staff then purportedly reviews the IEC and other application information to determine if the application is complete, and may request additional information, before proceeding towards an approval of some kind, legal with an EIS before the Governing Board or otherwise. This is what ROP 6.1 says, "These Rules govern the preparation and processing of environmental documents pursuant to Article VII of the Compact and Chapter 3 of the Code. These Rules must be read and applied in conjunction with Article VII of the Compact and Chapter 3 of the Code." However, TRPA doesn't comply with that last sentence, because the COO and ROP are inconsistent with the Compact. In practice the Compact is ignored in favor of the regulations, with management directing line-staff to implement the COO through the ROP—despite the language above. ROP 5.3 recites the exemption requirements of COO 3.2.2; useless.

ROP 6.4 authorizes the IEC, which bears an uncanny resemblance to the CEQA Checklist:

> The Executive Director shall devise and maintain an initial environmental checklist (IEC) that shall be used, in conjunction with other available information, to determine whether an environmental impact statement (EIS) shall be prepared for a project or other matter.
>
> Based on the IEC, and other information known to TRPA, TRPA shall make one of the findings, as appropriate, set forth in subsection 3.3.2 of the Code.

Here we again have the repetition of "whether" to prepare or act on *something other than an EIS*, when an EIS is required by the superior Compact for all projects not on the EIS-exempt list. Something other than an EIS is thus erroneously provided at two levels: the staff may determine that an "Environmental Assessment," or EA, is required (ROP 6.5), or staff may make a claim in the form of a "Finding Of No Significant Effect" or FONSE (ROP 6.6). Under the FONSE provisions,

> If, based on the IEC or EA, and other available information, TRPA finds that a project or matter will not have a significant effect on the environment, a statement of such finding shall be placed in the project file maintained by TRPA and no further environmental documentation shall be required. See Section 3.5 of the Code.

COO 3.5 refers implicitly to "TRPA" staff, as above: "If TRPA finds that a project or matter will not have a significant effect, no further environmental documentation shall be required." <u>It is under these illegal regulations that TRPA staff has for many years illegally dispensed with the Compact's EIS requirements.</u> It is under these deficient auspices that TRPA staff has approved literally thousands of projects as consistent with the Compact under FONSE or EA provisions where an EIS is required, with no Governing Board involvement or notice to the public.

With regard to "the IEC, and other information known to TRPA, TRPA shall make one of the findings . . . in subsection 3.3.2." The TRPA routinely mistakes recitation of a code with actual findings of fact presenting the substantial evidence and the "other information known to TRPA" with the underlying rationale for its decisions. Thus, TRPA "findings" generally lack "substantial evidence" to back up the claims of compliance. Beyond reciting code, they are often just bald assertions with barely more than a "scintilla" of substance to satisfy the courts, rubber-stamping the applicant-prepared IEC because staff knows no better and can't critically assess the potential impacts due to a lack of necessary interdisciplinary expertise, time, public input, whatever. TRPA claims to have "planning expertise," per my lawsuit, and is overall altogether lacking in the engineering and science departments.

I claim their planning expertise stinks. TRPA is a planning agency that can't or won't plan for anything important. I have cited in public comments many examples too numerous to mention here, but wireless communications tower radiation and high levels of toxic microplastics in Lake Tahoe are two very important matters with no planning or policies whatsoever and years of pretended ignorance as they worsen the problems and effects from both. TRPA has proven again and again there is no impact it can't ignore with its fraudulent procedures and "findings." Draw your own conclusions about whether TRPA is acting with negligent and criminal intent after being confronted over and over by me and others in the public forum, acting willfully in violation of the Compact with knowledge of their abuses. Besides FONZEs and EAs routinely approved in back rooms by staff I've seen plenty of approvals by the Governing Board of staff-prepared FONZEs and EAs, and such approvals are now are ripe for lawsuit if TRPA perpetuates such actions in light of these writings.

Public Input Denied

TRPA chills public input by expecting the public to somehow know what applications TRPA has received and what they are doing with them, through their lousy database for project information. TRPA does not publicize applications received. In order to look up a project application on the TRPA website the county Assessor's Parcel Number(s) or TRPA's internal "ERSP____" ID must be known. Occasionally a project emerges on an agenda for illegal consideration by a Hearing Officer or consideration by the Governing Board, but seldom with an EIS. Note under the Compact the Governing Board is *only* empowered to consider and approve of an EIS prepared as specified, nothing lesser. Nonetheless, TRPA, including its Governing Board, nearly always acts under an EA, a FONSE, or a "mitigated" FONSE: "If TRPA finds a project or matter will not have a significant effect if certain mitigation measures are incorporated into and made a part of the project, the project description shall be correspondingly modified and no further environmental documentation shall be required." (COO 3.6, ROP 6.7). That's akin to CEQA's "mitigated Negative Declaration." Just like the FONSE, the illicit EA is another avenue for illegal approvals, just a level up, skirting the public EIS preparation and approval requirements, and approval-voting requirements in many cases.

The foregoing is the antithesis of meeting the Compact's specific EIS requirements as stated in Article VII, which bears repeating:

> a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment . . . consider a detailed environmental impact statement before deciding to approve or carry out any project . . . shall include the following: . . . The significant environmental impacts of the proposed project . . . Alternatives to the proposed project . . . Mitigation measures which must be implemented to assure meeting standards . . . The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity . . . The growth-inducing impact of the proposed project . . . appropriate alternatives to recommended courses of action for any project which involves unresolved conflicts concerning alternative uses of available resources . . . Make available to States, counties, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the region's environment . . . utilize ecological information in the planning and development of resource-oriented projects. . . . Prior to completing an environmental impact statement, the agency shall consult with and obtain the comments of any Federal, State or local agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of . . . the comments and views of the appropriate Federal, State and local agencies . . . shall be made available to the public . . .The public shall be consulted during the environmental impact statement process and views shall be solicited during a public comment period not to be less than 60 days.

All of the above was dispensed with decades ago by TRPA adopting illegal regulations, mainly for its own convenience and efficiency, and without recognition of what they are actually doing. And they do get the projects out the door! 1000 per year in recent years, but with no credible assurance adverse effects are being identified or mitigated. Instead of EIS consideration by the public and the Governing Board backroom FONSE approvals that never see the light of day are filed away, or evaluations and analyses only by TRPA staff that fall far short of Compact EIS and public participation requirements are presented to the Governing Board after severely-limited comment periods. In my own case, *Miller v. TRPA*, staff didn't even require a complete IEC, and approved a major plan revision for the Ski Run Blvd. industrial cellular macrotower in S. Lake Tahoe without even a statement of such FONZE placed in the project file as required; I suspect the IEC was not even reviewed, let alone critically.

Request for Project Approval Public Records

TRPA hasn't prepared many EIS or EA documents in recent years compared to FONSE approvals. To verify this assertion, I am making the following request for public records in the public interest: I request to report all the non-exempt projects approved by TRPA since January 1, 2013, to date, following the major 2012 Regional Plan amendment. I wish to know whether they were approved by the Governing Board or by staff, and whether the approval was under a FONZE, mitigated FONZE, EA, EIS or nothing at all with regard to environmental review requirements. Also report the number of permit appeals brought before the Governing Board, the appellant(s), and whether the appeal was approved or denied. I am seeking at this time the forgoing information with the project name, project tracking identifier info

and parcel number(s) and the dates of the approvals or denials. You can report information to me at syngineer1@gmail.com.

FRAUDULENT APPEALS AND PUBLIC PARTICIPATION GRIEVANCES

I want to focus again on that last sentence quoted above from Art.VII concerning public participation. The way I see it, TRPA basically enacted a process similar to CEQA, but with one very critical difference, especially with regard to project exemptions. TRPA cut out the public noticing and participation requirements often quoted as being "the heart of CEQA," insofar as the CEQA review process is essentially carried out to disclose information to the public so they may participate in informed decision making and legally challenge approvals, including certain exemptions. CEQA otherwise has no further bearing here.

The implication is TRPA operates as if doesn't need public input and the public doesn't need to know what it is doing behind closed doors. They suffer through public input when they must while mouthing the opposite, but it's a hindrance to their perceived efficiency. TRPA is generally incompetent and unscientific even in preparing an EIS (when it does) and seldom incorporates public comment into its decision-making, preferring instead to just vote the "staff recommendation" in lock-step. My experience is that TRPA cynically distains public detractors and their input as an impediment to its own planning agendas. The arrogant TRPA and their staff planners know what is best for the region and doesn't need the public getting in the way, even through the fraudulent appeal process; thus they made their illegal actions hard to detect and appeals onerous and costly.

There should never be an appeal of a decision made by staff: all decision authority resides with the Governing Board. TRPA made all the appeal nonsense up with NO BASIS to support their illegal staff approvals. An appeal is a quasi-judicial proceeding with TRPA acting as both the prosecutor and the adjudicator, no separation of functions. Appeals are without merit! More garbage in the COO and ROP, with no justice provided. High appeal fees are set to chill dissent. Projects or other matters should be voted on by the Governing Board, per the Compact, and proceed directly to court if a party is aggrieved. The whole appeal process in the regulations is a sham as I well know from experience. Read my attached court filings to see the illegal machinations TRPA put me through during the appeals process; for pity sake, TRPA couldn't (or wouldn't) even follow its own rules! Criminals.

KEEP TAHOE PURE, MICROPLASTICS ENDURE; USE WOOD, METAL AND STONE IN THE SHOREZONE

Finally, this is a petition to TRPA to begin to address the microplastics mess in Lake Tahoe. Whether or not TRPA has caused and/or greatly contributed to it as I believe, problems will only worsen with time. Evidence will only grow. TRPA has already wasted 2.5 years with no regulatory action to address microplastics in Lake Tahoe since my September 2022 testimony.

Environmental Problem Assessment Is Required

COO 5.12.3 Environmental Problem Assessment provides,

> TRPA shall develop, adopt, and maintain problem assessments which identify existing situations which adversely impact attainment or maintenance of the thresholds or constitute violation of a threshold, the Goals and Policies, or the Code. The problem assessments shall identify affected property owners, abatement measures, estimated costs, and sources of funding for implementation of abatement measures . . . . In development of problem assessments, TRPA shall consult with affected local governments and state and federal agencies. (emphasis added)

I shouldn't have to tell TRPA to undertake this required action for microplastics. Again we have TRPA failing to implement its own regulations though microplastics have been identified in Lake Tahoe since circa 2019, and although Lake Tahoe is *among the most contaminated large water bodies on the planet* with microplastics.

TRPA has no source identification program for microplastics. The incompetent TRPA is a planning agency without a plastics control plan, pursuing plans to propagate persistent plastic pollutants and proposes study of the problem at great public expense. This they've done in ignorance of gross evidence of pollutant discharges to the waters of Lake Tahoe from the structures TRPA has approved for decades while eschewing environmental review requirements. If the effects are not cumulatively substantial from deteriorating shorezone structures, TRPA should prove it under COO 5.12.3—in the public sphere. Continuing to approve of plastic structures in the shorezone is subterfuge and misdirection by TRPA in service of the corporation.

TRPA Ignores Cumulative Effects Evaluation Requirements

Also, since microplastics are a "cumulative effects" issue, I will further note TRPA's failure to implement provisions in COO 4.4.2 "Findings Necessary to Approve Any Project." This failure is accomplished under the previously-described deficient approval processes. TRPA is very fond of reciting required findings in COO 4.4.1, often with no supporting "substantial evidence," while ignoring COO 4.4.2 requirements entirely: "As part of the findings required by subparagraph 4.4.1, TRPA shall . . ." evaluate a number of threshold-related effects, and make specific findings in subparts A – F that address cumulative effects evaluations and planning, findings supported by substantial evidence. I haven't seen any examples or evidence of a recent assessment for "any project." I could lodge a public records request . . . to compel TRPA to search for non-existent records. No. I assert they just don't do it, disregarding their own regulations, taking fraudulent actions unsupported by evidence. That administrative failure alone ought to be enough to undermine any project approval in court.

Suggestions for microplastics abatement are outlined in my Settlement Offer, Exhibit 5 of Attachment 1, pdf pp 74-76. COO 2.3.7 provides that TRPA can terminate an exemption if it finds an exempt activity may have a substantial effect. TRPA must stop illicit exemptions for, and approving of, projects with plastic structures in the shorezone and nearshore areas, including replacements in kind. These have led to gross contamination of the waters by toxic microplastics and other substantial effects. To continue such approvals and exemptions to the detriment of Lake Tahoe in pretended or actual ignorance puts TRPA and your permit clients at legal peril. I will continue to document and expose the culpability of the

Tahoe Regional Plastics Agency in microplastics contamination as opportunities arise. Stop violating the Compact. Do your job.

CONCLUDING REMARKS

TRPA is a kind of schizophrenic agency, with sociopathic tendencies. With one hand they support important funding and work *by others* needed for environmental restoration, while with the other they carry forward with egregious planning and regulatory deficiencies that are destroying Lake Tahoe for the foreseeable future, careless, under the past and current Boards and management. The discussion above should lay bare the many inconsistencies with the Compact in the illegal TRPA regulations, and how they fail to provide environmental protection. That is why I seek redress for these grievances widely affecting the public. I didn't go into the civil rights violations herein as those are briefed in my lawsuit filing (e.g., Attachment 2, pdf pp 22-25, 31) and the implications are very important to consider, so I refer the reader there.

Is it any wonder, under the circumstances presented here, that TRPA has failed to move the clarity needle deeper for Lake Tahoe while simultaneously approving thousands of development projects out of the public view under FONZEs and EAs? Not to me. TRPA doesn't develop the information needed for an EIS and approves FONZE after FONZE (or EA) with no public or partner-agency scrutiny. Most I've seen are fatally short on facts and analysis. TRPA executive staff is questionably competent in many respects, sad to say. Thus, TRPA hides from me and other detractors, ignores criticisms, and damages the environment project after project, year after year, decade after decade, with their false exemptions from EIS requirements, their illegal delegations to staff and other agencies, and all the rest of their egregious tactics that are resulting in degrading the Tahoe region, rosy threshold evaluations by TRPA notwithstanding (their "self-report card").

This information is placed in the public record to encourage action, as appropriate, by others who have struggled to understand TRPA regulations or commented against TRPA actions for failing to do what is required under the law. While I am not providing any specific legal advice here in comparing the TRPA regulations against the Congressional statute, I am going to suggest the TRPA will continue to act in flagrant violation of the Compact unless it is opposed. I've laid out a strong legal framework that anyone can vet for themselves or with their own legal counsel to pursue redress as they may. This could be through filing *writs of mandamus* or *quo warranto*, by filing complaints in court for specific projects or abuses, by contacting the President or their Congressional or state representatives or others, Attorney General offices, and anything else they can dream up, skipping all bogus hearings and appeals and the like and proceeding directly to court if necessary. The legal basis for appeals must be challenged. I am not suggesting frivolous or "nuisance" actions in any way. If those aggrieved refuse to take action TRPA will continue its abuses, we'll have the government we allow. The environment and Lake Tahoe will degrade, perhaps irreversibly as we've seen so far, with the public paying the bills and bearing the harms from TRPA misfeasance.

A Way Out

What a mess the TRPA regulations are! It's quite a lot to digest, and thus these writings have expanded as I went along. There are probably things I missed or understand incompletely, subject to revision. It's complicated in some ways, needlessly so in my view. I don't have a need to specify how the TRPA fixes what's broken. They can figure it out with public participation. My lawsuit and other comments in the TRPA public record provide suggestions as yet ignored. TRPA could post a list of applications received by date and processing status for public review, as the judge in my case suggested in a prior case TRPA *lost*, with references to identifiers and other application information so people can know what's coming and how to get the online details from TRPA's awful project database. I will hint that the regulatory changes needed could incorporate existing augmented processes used by TRPA, to an extent, to prepare and bring multiple non-controversial EIS documents, including those of a "programmatic" nature for an identified class of projects, and proposed permits before the Governing Board for consideration of approvals with due notice in TRPA's on-line agendas. TRPA could develop General Permits for specific classes of projects.

No more fraudulent exemptions. No more failures to prepare EIS documents. **No more checklist-based staff approvals of permits. No more appeals.** The latter will lighten the load. Most of the permit items would perhaps land on the Consent calendar of the agendas, with the caveat that **anyone so requesting removal from consent and opportunity for a public hearing on a matter or permit decision before the Governing Board shall be afforded the right to freely address the Governing Board**. Thus, civil rights would largely be restored. Most people won't want a hearing based on my experience, and many projects won't have them. If TRPA refuses these and other viable alternatives to the illegal programs identified herein, the grievances will remain and, until it proves more useful I frankly hope TRPA is derailed by the Trump administration or others and/or sued into compliance or oblivion, even if I have to be among those who will accomplish that. I am not opposed to sharing the important work and invite collaborations if you are aggrieved by a decision or inaction of the TRPA.

Issued by:

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Attachment 1: *Miller v. TRPA*: Motion for Summary Judgment/Motion to Supplement the Administrative Record

Attachment 2: *Miller v. TRPA*: Opposition to Cross-Motion For Summary Judgment and Reply to Opposition Motion For Summary Judgment

Attachment 3: *Miller v. TRPA*: Objections to Magistrate Judge's Findings and Recommendations

Attachment 4: Anna Von Reitz's **International Public Notice: Worldwide Dependency**

CC *sans* Attachments (available on request):

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALAN MILLER, Plaintiff, v. TAHOE REGIONAL PLANNING AGENCY, Defendant.	No. 2:22-CV-02113-KJM-AC **MOTION FOR SUMMARY JUDGMENT**

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Administrative and Executive Materials

Regulations:

TRPA Code of Ordinances (generally)

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Documents:

Environmental Laboratory. (1987). "*Corps of Engineers Wetlands Delineation Manual*," Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

Secondary Materials

Industry Model Codes:

California Building Code 2019 (Vol 1 & 2)

I. SUMMARY OF THE CASE

Tahoe Regional Planning Agency (TRPA) approved a Permit for a *faux*-pine macrotower, 112 feet high, in the City of South Lake Tahoe, California, in March 23, 2022. On August 5, 2022, TRPA responded to an application to revise the Project plans for the macrotower by issuing an exception to a prohibition in the TRPA regulations against excavation exceeding five feet in depth, to prevent interference with a below-ground water table. The exception approval allowed deepening the excavation from 7.5 feet to 13.5 feet, and doubling the amount of material removed from 25 to 50 cubic yards to accommodate the Applicant's design. TRPA approved the revised plans shortly after issuing the exception. I and others appealed the approval of the exception and the revised plans, including a stay request (denied) for the deepened excavation. What unfolded thereafter in the lead-up to the Appeal hearing was all sorts of illegal actions and machinations by TRPA culminating in an arbitrary and capricious denial of the Appeal before the TRPA Governing Board. This litigation followed with twelve separate claims for relief from August 5, 2022 to September 28, 2022, and one ongoing violation from October 3, 2022, seeking relief to set aside the revised Permit and dismantle the tower, and to impose civil liability on the TRPA to fund a court-appointed "special master" to prevent further abuses of discretion in TRPA regulatory actions through court oversight. This case is ripe for summary judgment as sought from this court based on the evidence and argument that follows, including information to supplement the administrative record as allowed in the court's discretion.

II. STANDARDS FOR JUDICAL REVIEW

The reviewing entity is generally charged to determine on the basis of the AR whether the action taken was supported by the whole record, or was arbitrary and capricious, or not in accordance with law. If there are claims in the Plaintiff's lawsuit—*e.g.*, the agency process was corrupt or fraudulent, then materials outside of the AR can be introduced, and there may be an entitlement to limited discovery at the court's discretion, even when the case involves only reviewing an administrative decision. The court determined bad faith actions by TRPA may constitute grounds for supplementing the AR, for consideration and debate in motions and cross-motions. I'm grateful for the court allowing me leave to file

a separate motion to supplement the record in this case concurrently with this motion for summary judgment per Magistrate Judge Claire' minute Order dated June 11, 2023.

This Motion for Summary Judgment (MSJ) realleges and incorporates by reference all paragraphs in the Motion to Supplement the Administrative Record (MSAR) I filed concurrently with this motion. The information therein is intended to further elucidate why TRPA deserves the maximum civil liability and other relief the court may impose for the claims in this MSJ.

The Status Report filing followed shortly after I received the certified administrative record (AR), with limited time for review of its 3,429 pages. Upon review of the AR, I am not contesting what is presented within it, in the sense that it contains information that comprises the public record. However, that information does not tell the complete story. The MSAR is intended to provide information missing from or hidden in the record to give the court a more complete history on which to judge the merits of the case and TRPA's actions in bad faith.

With regard to the claims in my case, I am following a general rule of law concerning judicial review with regard to the AR, which is that the agency must justify its actions based on the public records existing at the time the decision was made, not on "extra-record" evidence and findings produced after the fact and inserted into the AR, as TRPA did in the Appeal hearing. To draw from case law, an analogy can be drawn here with the court's findings in *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985) discussing,

> "[T]he focal point for judicial review should be the AR already in existence, not some new record made initially in the reviewing court" (*Camp v. Pitts*, 411 U.S. 138, 142 (1973)). The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court (*Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971)).

Judicial review standards for TRPA are only a little different than the APA,[1] and first review was by the TRPA Governing Board on the Interim Executive Director's (IED) action approving a prohibition

[1] Compact Art. VI(5) ("In any legal action …the scope of the judicial inquiry shall extend only to the questions of whether the act or decision has been arbitrary, capricious or lacking substantial evidentiary support or whether the agency has failed to proceed in a manner required by law"). The Compact supersedes the default APA where the two conflict (*see, Edmond v. United States*, 520 U.S. 651, 657 (1997) (where a specific provision conflicts with a general one, the specific governs)).

exception on August 5, 2022 and subsequent approval of revised plans. The Governing Board's legal charge: determine if the IED acted arbitrarily and capriciously or not in accordance with law.[2] By analogy, this court should first review whether the IED's action was supported on the basis of the AR already in existence at the time of the Director's decision, not on some new record created by the reviewing body. The AR prior to August 5, 2022 must be used to determine whether the IED's exception decision was supported by the AR. If not, that constitutes grounds to set aside the IED's exception approval and for relief.

The court would then further review whether the claims in this case are supported by the AR through the conclusion. If the Governing Board's decision on the IED's decision was arbitrary and capricious, or not in accordance with law, that also constitutes grounds to set aside the approval and for relief. (With respect, I am not instructing the court, but rather putting forward the information I am proceeding under as a *pro se* litigant, and aiming to dispel potential confusion from processes TRPA employed through conclusion.) Reference also my comments to TRPA on judicial review starting at the bottom of AR1289-AR1290 and AR1293.

III. GENERAL COMMENTS ON THE ADMINISTRATIVE RECORD

With an overview to the AR in this case, my pre-Appeal writings are lengthy and substantial, on a variety of telecom-related subjects (as in my hearing testimony). In my view, the Defendant's public record of primary, material interest for the prohibition exception granted consists of three sentences in the August 5, 2022 exception letter (AR0269),

> The Tahoe Regional Planning Agency (TRPA) staff has reviewed the Soils/Hydrologic Scoping Report Application submitted in association with a monopine cell tower and equipment shelter. The proposed excavation is **13.5 feet below ground surface**. It is not expected that groundwater will be encountered in this location and the excavation is allowed pursuant to TRPA Code of Ordinances §§ 33.3.6.A.2.a (accommodation of engineering requirements for above-ground structures) and 33.3.6.A.2.d (public health and safety). (**emphasis** in original)

The record I made is replete with information on the failings of the "Soils/Hydrologic Scoping Report Application." The parenthetical shorthand references quoted above reflect the broad thinking of the

[2] These concepts must underlie the Governing Board's quasi-adjudicative function in appeals.

staff unrelated to the actual language in the Code. For subsection a., excavation per the Code is allowed when "required" by law, not as a staff "accommodation" to the Applicant's desires. For subsection d., the letter states the excavation is "allowed" for public health and safety, when the Code requires that it must be "necessary." This approval letter was TRPA's opportunity to discuss and explain their findings in light of the whole record and there is nothing of substance. One of the sections is sufficient for an exception but neither withstands legal scrutiny, as I'll discuss under Claims 7 and 8.

The Notice of Appeal (NOA) was filed with the Affidavit for stay (AR0731-AR0755), followed by lengthy emails concerning the illegal Appeal hearing schedule imposed and a letter of support on my behalf concerning the applicable professional standards for soils/hydrologic investigations. This letter was from an extraordinary professional associate, Lori Carpenter (AR1188-AR1205), who was directly and significantly involved under contract in developing the methods TRPA is to follow concerning excavation that may interfere with ground water. These important methods are now forgotten with staff turnovers and a TRPA managerial change from engineers to lawyers in recent decades and now a public-relations manager. The Statement of Appeal (SOA)(AR1287-AR1309) was filed early under duress and objection on September 13, 2022, with its seven Exhibits, including my engineering analysis of impervious land "coverage," and I provided a comment letter (AR2863-AR2873) after the Staff Report for the Appeal was published, before the hearing. In response, the five-page TRPA Staff Report and multiple Exhibits therein (AR1584-AR1987) provided no record support for the staff approval.

The Staff Report for the Appeal in the AR is primarily a post-approval effort to insert new information into the record while also attempting to limit the focus of the hearing and Board consideration to the excavation exception alone (AR1586); the latter was improper with regard to issues raised in my Affidavit about the scope of the incomplete application provided. Most arguments in my pre-Appeal record are presented several times in the AR, so references herein serve to support the entire record I provided.[i]

IV. PROOF OF CLAIMS FOR RELIEF

Claims herein are referenced to my First Amended Complaint (FAC), with all paragraphs in the FAC hereby incorporated by reference. I hold with a strict interpretation of the statutes and regulations. In

general, an agency decision is arbitrary and capricious[3]: if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[4] A court should invalidate agency determinations that fail to "examine the relevant data and articulate a satisfactory explanation for [the] action including a 'rational connection between the facts found and the choice made.'"[5] Courts must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment."[6] An agency decision that is the product of "illogical" or inconsistent reasoning,[7] that fails to consider an important factor relevant to its action, such as the policy effects of its decision or vital aspects of the problem in the issue before it;[8] or that fails to consider "less restrictive, yet easily administered" regulatory alternatives,[9] will similarly fail the arbitrary and capricious test. An agency action that departs from a prior policy without acknowledging the change, or that creates an "unexplained inconsistency" with prior policy is generally viewed as arbitrary and capricious.[10] Pretextual rationalizations for decisions are also arbitrary and capricious.[11] "The reasoned explanation requirement of administrative law…is meant to ensure that agencies offer genuine justifications for important decisions,"[12] therefore, pretexts are an example of bad faith or improper behavior which illegally subvert due process. I move to have the court find the TRPA acted in an arbitrary and capricious manner for the under-mentioned claims.

[3] *Id*. (The Compact adopts the APA's arbitrary and capricious review).
[4] *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, 463 U.S. 29, 42-44 (1983).
[5] *Id.*
[6] *Id.*
[7] *Am. Fed'n of Gov't Emps., Local 2924 v. Fed. Labor Relations Auth.*, 470 F.3d 375, 380 (D.C. Cir. 2006).
[8] *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 698 F.3d 1101, 1124 (9th Cir. 2012).
[9] *Cin. Bell Tel. Co. v. FCC*, 69 F.3d 752, 761 (6th Cir. 1995).
[10] *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).
[11] *Department of Commerce v. New York*, 139 S. Ct. 2551, 28-34, 47, 71 (2019) (holding action as arbitrary and capricious, based on a pretextual rationale; under a narrow exception to the general rule against judicial inquiry into the mental processes of administrative decisionmakers, such an inquiry may be warranted and may justify extra-record discovery, on a strong showing of bad faith or improper behavior; in order to permit meaningful judicial review, an agency must "disclose the basis" of its action; [t]he reasoned explanation requirement of administrative law, after all, is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public).
[12] *Id.*

A. Claim 1—August 5, 2022 Exception Letter. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. The August 5, 2022 exception letter was issued, asserting compliance with requirements in Code § 33.3.6.A.2, letters a. & d. That the letter was issued is uncontested fact.

WHAT THE LAW REQUIRES: Code § 33.3.6.A.2. states:

> 2. TRPA may approve exceptions to the prohibition of groundwater interception or interference if TRPA finds that:
>
> a. Excavation is required by the International Building Code (IBC) or local building code for minimum depth below natural ground for above ground structures;
>
> …
>
> d. It is necessary for the public safety and health….

WHAT TRPA DID: The August 5, 2022 letter approved an exception to the above-cited prohibition without substantial fact-finding therein that the deepened excavation would not interfere with ground water. With regard to subsection a., there is no public record from TRPA that cites a requirement of the IBC or local building code. In my Affidavit for the stay, I cited relevant provisions of the "IBC" (as currently codified) that preclude prescriptions with regard to designs by competent designers, stating that the chosen design was due to Verizon alone, not any code prescription, and that there was nothing in any code to preclude another design that would eliminate potential interference with ground water (AR0738-AR0740). I challenged TRPA to refute that part of the Affidavit for the record, and produce the operative code they applied on August 5, 2022.

Verizon wrote a letter dated August 24, 2022, full of specious claims—but no IBC code citation (AR0887-AR8892). With nothing to refute my assertions, the Staff Report notes (AR1589), "Staff does not apply this provision as strictly as desired by Miller." This is a clear admission that the Codes reference to IBC requirements or local code requirements is and was illegally ignored by TRPA,[13] leaving the matter of lifting prohibitions to prevent ground water interference to the arbitrary and capricious[14] whim of the staff and Board, as here, with absolutely nothing in the AR to support the illegal decision.

TRPA also cited "d. It is necessary for the public safety and health" to lift the prohibition and allow interference with ground water table. Again, there is nothing provided in the AR prior to August 5,

[13] *Infra* note 25.
[14] *Supra* note 4.

2022 that documents how TRPA determined the deepened excavation is "necessary for public safety and health." I refuted such necessity findings at length in my Affidavit, showing the tower design standard applied doesn't support public safety in an emergency (AR0738-AR0743) and Exhibit "B" (AR0753-AR0755). My civil engineering assessment is that the tower was designed without consideration of snow and ice loads and therefore a potential danger to life and property from collapse due to its tremendous height (112 feet) and weight (in excess of 15,000 pounds) (AR0168), among other reasons. These potential dangers are NOT refuted in the AR. The 10,000 pounds of tower plastics were not installed prior to the epic winter of 2022-2023, with severe snow and ice loads that collapsed many long-standing structures at Lake Tahoe. Plastics began to be installed the week of July 16, 2023.

The exception letter is arbitrary and capricious as it merely cites applicable code sections, states the project meets the applicable code requirements, and grants the exception. The only finding made in the letter is that ground water was not expected be encountered based on a cursory investigation report by the Permittee's contractor, the Geotechnical Report (AR00046) from 2019. That report was re-filed on August 2, 2022, as the Revised Geotechnical Report (RGR) with the first detailed engineering information on the specific tower design (structural calculations), and no changes to the soils/hydrology assessments and findings (AR0154-AR0227). The exception letter was issued August 5, 2022, and the plan revisions were approved and stamped on August 17, 2022 (AR0665-AR0678), with construction on the foundation well underway under the March 2022 Permit. I filed the NOA and stay request on August 22, 2022, refuting that the RGR was professionally appropriate, correct or adequate to determine that interference to a ground water table would not occur, as required, at length in the record (*e.g.,* AR0743-AR0747, and later at AR1295-AR1296, AR2865-AR2866, Ms. Carpenter's letter (AR1188-AR1205) and Claim 8, below).

B. Claim 2—Late Response for Stay Request. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 2 pertains to a late response to the stay request.

WHAT THE LAW REQUIRES:

> The Chairman of the Board shall review any request for a stay of a project or matter and the evidence submitted therewith, and any evidence of the hardship on the appellee, shall balance the equities and shall determine, within two working days of the request, whether or not a stay shall be issued. (ROP § 11.3)

WHAT TRPA DID: TRPA responded to the stay request three days after it was filed. The Appeal and stay request was filed on August 22, 2022. On the third day TRPA responded, the first show of bad faith by TRPA in this matter (*see* AR1182 email from General Counsel Marshall providing the Board Chair's decision). In "balancing the equities" the Board Chair responded illegally, in bad faith depriving Appellants of our due process rights under the ROP, and putting us in extreme and unanticipated hardship[15] to prepare our Statement of Appeal (SOA) and our case for both the Legal Review Committee hearing, and the Appeal hearing by September 28, 2022, as illegally scheduled by the Chair. The equities were unbalanced to prejudicially favor Verizon and suit TRPA.[16] The Board Chair's stay response (AR 1186) included a prejudging of the outcome of the appeal, before the SOA was even filed, stating the Appeal "has not demonstrated a substantial likelihood of success on the merits of his arguments that TRPA staff erred in its approval of up to 6 additional feet of excavation." *See,* my replies objecting at AR1184-AR1186, with some confusion under the surprise circumstances.

C. Claim 3—Advancement of Appeal Hearing Date. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 3 involves TRPA's illegal advancement of the Appeal hearing date.

WHAT THE LAW REQUIRES: The Appeal hearing date must be scheduled in accordance with the SOA filing, to the next regular Board meeting date the following month if filed on or before the 15th of the month, or the next regular Board meeting date two months following if filed after the 15th of the month (ROP §§ 11.2 & 11.4).[17] Due process also prohibits *ad hoc* changing of rules in the middle of the game—especially any tilting that's offensive to the ordinary notions good faith and fair dealing.[18]

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[15] "The core of due process is the right to notice and a meaningful opportunity to be heard." *Lachance v. Erickson*, 522 U.S. 262, 266 (1998).

[16] *Ward v. Village of Monroeville*, 409 U.S. 57, 62 (1972) (litigant "is entitled to a neutral and detached judge in the first instance"); *Goldberg v. Kelly*, 397 U.S. 254, 241 (1970) ("impartial decision maker is essential" to due process); *Mathews v. Eldridge*, 424 U.S. 319, 325 n.4, 335, 344 (1976) (Due process right includes: an "impartial" decisionmaker; a decision resting "solely on the legal rules and evidence adduced at the hearing"; a statement of reasons for the decision and the evidence relied on. "[P]rocedural due process rules are shaped by the risk of error inherent in the truthfinding process").

[17] Agencies must abide by their own rules and regulations (*Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). "It is rudimentary administrative law that discretion as to the substance of the ultimate decision does not confer discretion to ignore the required procedures of decisionmaking" (*Bennett v. Spear*, 520 U.S. 154, 172 (1997)). *See also*, *supra* note 10 (an agency action that departs from a prior policy without acknowledging the change, or that creates an "unexplained inconsistency" with prior policy is generally viewed as arbitrary and capricious).

[18] "[T]he substantive component of the Due Process Clause is violated" when action "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense" (*County of Sacramento v. Lewis*, 523 U.S. 833, 846

WHAT TRPA DID: Advanced the Appeal hearing date based only on the August 22, 2022 Notice of Appeal (NOA) and stay request (to the scheduled regular Board meeting on September 22, 2022), and requested the SOA in seven days (rather than the 30) for Board consideration.

The Chair's response cited ROP § 11.3, but this scheduling violated § 11.3, which states in relevant part, "… pending a hearing on the appeal before the Board at its next regular meeting." The "next" regular Board meeting after the filing was on August 25, 2022. The earliest hearing date under ROP §§ 11.2 & 11.4 was October 26 or November 16, depending on the SOA filing date. The scheduling was not in accordance with law and pushed the hearing forward to assist Verizon to complete the foundation construction before TRPA's annual Oct 15 – May 1 requirements to cease usual construction (before onset of winter conditions). At AR3405-AR3406, Mr. Marshall purportedly explains the rules to accelerate the hearing to September 28, 2022, vaguely.

D. Claim 4—Requirements for a Complete Project Application. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 4 is concerned with requirements for a complete application, as specified in ROP § 5.2.

WHAT THE LAW REQUIRES: A complete application in accordance ROP § 5.2 is required to inform regulatory action to approve a Project or Project plan revision.

WHAT TRPA DID: TRPA approved the plan revision on August 5, 2022, though all specified requirements for a "Complete Application" were not met (AR0237-AR0241). The Plan Revision was approved despite many missing application elements. TRPA asserts these missing elements are covered by general Permit conditions imposed on the Project (Defendant's Answer to FAC March 28, 2023), *i.e.*, for vegetation protection, site access, soil stockpiling, *etc.*, despite the absence of specific information and provisions by the applicant to address potentially significant impacts, as required. Whether there is a general Permit condition or not in the Permit is irrelevant to the application requirements. What is highly relevant is that the application was incomplete.

E. Claim 5—Application Signer in Perjury. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 5 is that there is no application signature by the applicant in accordance with ROP § 5.2.4. and that any such signature, if it exists, puts the signer in perjury.

(1998)).

WHAT THE LAW REQUIRES: ROP § 5.2 states:

> An application shall be on a TRPA form prescribed by the Executive Director and shall be executed by a person having sufficient legal interest to make application. . . A complete application consists of the following:" [with eight listed requirements. § 5.2.4 requires the applicant or agent shall provide:] "A dated signature, by or on behalf of the applicant, attesting under penalty of perjury to the truth, completeness, and accuracy of the contents of the application. . . .

WHAT TRPA DID: TRPA accepted and processed the application as if it was complete, without notice that the application was incomplete and the Agent-signer committed perjury (AR0237-AR0241). Allowing that e-signatures are routinely accepted in practice, if the e-signature in the AR is deemed valid, the Agent's application declaration must therefore be in perjury. The application form indicates no application will be deemed complete without an IEC and other missing elements (per Claim 4). The applicant can't declare truthfully the application is "complete to the best of my knowledge" with the missing elements, and TRPA shouldn't have approved an incomplete application submitted with statements in perjury.

F. Claim 6—Incomple Application: Missing Initial Environmental Checklist. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 6 focuses on the application's missing Initial Environmental Checklist (IEC).

WHAT THE LAW REQUIRES: "Appropriate environmental documentation, in accordance with Art. 6 of these Rules;" and, because the project is not exempt from appropriate environmental documentation, the requirements of ROP § 6.4 apply:

> The Executive Director shall devise and maintain an initial environmental checklist (IEC) that shall be used, in conjunction with other available information, to determine whether an environmental impact statement (EIS) shall be prepared for a project or other matter. Based on the IEC, and other information known to TRPA, TRPA shall make one of the findings, as appropriate, set forth in subsection 3.3.2 of the Code.

WHAT TRPA DID: There is nothing in the AR to indicate that any environmental review for the plan revision application was accomplished by TRPA with regard to the IEC requirement is at the heart of the permitting action, among the most critical elements, and thus my focus on it among the various missing application elements. The Checkbox for the IEC was left blank on the application, indicating no

IEC was filed (AR0240). The IEC form supplied by the applicant is to be reviewed and verified by staff in order to make a determination about potential adverse environmental effects. Nonetheless, staff overlooked the IEC omission, and issued the exception letter and Permit revision with no environmental review. The Staff Report totally misinformed the Board, first saying I claimed TRPA should prepare an IEC, and then stating: "TRPA rules, however, only require supplemental environmental review for a project revision if that revision involves new significant environmental effects not otherwise considered" (AR1587). I pointed out in my Affidavit numerous potential adverse effects of the Project plan revisions TRPA staff missed due to a failure to require and evaluate the IEC, besides ground water interference, including for access routes to the dig site and from excess soil to manage on a tiny staging area (AR0735-0736). These resulted in Permit violations, as discussed in my MSAR. The Staff Report misstated the Code and rules, citing, "*See e.g.*, Rules of Procedure 6.15.1 (Grounds for Supplemental EISs)." This rule doesn't apply because no EIS or even an Environmental Assessment (EA) had been prepared by TRPA for the Project approved in March 2022.

G. Claim 7—No Environmental Review Determination. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 7 concerns violation of ROP § 6.6 requirements for staff to document the environmental review determination.

WHAT THE LAW REQUIRES:

> If, based on the IEC or EA, and other available information, TRPA finds that a project or matter will not have a significant effect on the environment, a statement of such finding shall be placed in the project file maintained by TRPA and no further environmental documentation shall be required.

WHAT TRPA DID: TRPA did no environmental review for the exception granted and the plan revision. There is no valid IEC (including from 2019) or EA and no statement of finding in the file for the exception based on the AR (There was no environmental review determination filed).

H. Claim 8—Incomplete Application: Missing Necessary Reports. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 8 concerns receipt of all necessary reports to complete the application.

WHAT THE LAW REQUIRES: All reports required in ROP and checklist items in the online application for a major plan revision must be provided.

WHAT TRPA DID: TRPA treated the plan revision application as a minor, insignificant plan change, for which prior project reports would suffice, except for a required soils/ hydrological report. For that, TRPA accepted a revised geotechnical report (RGR), unaltered from 2019 with respect to soils and hydrology, as a valid basis for asserting the project would not interfere with or affect a ground water table. The RGR was prepared by an unqualified professional without the field methods approved by TRPA in advance, as required (ROP § 33.3.6.B.1).

The TRPA abused their discretion[19] in justifying agency action from the RGR because this evidence is inadmissible under the *Daubert* standard as applied to soils and hydrology associated with wetland deliniation science. The factors that may be considered in determining whether the methodology is valid are: (1) whether the theory or technique in question can be and has been tested; (2) whether it has been subjected to peer review and publication; (3) its known or potential error rate; (4) the existence and maintenance of standards controlling its operation; and (5) whether it has attracted widespread acceptance within a relevant scientific community (*Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993)).

The RGR fails the *Daubert* standard because: (1) they used a technique which through testing has been shown to be inadequate to determine the ground water boundary; (2) peer-reviewed literature does not validate their method in establishing a groundwater boundary; (3) the RGR, being riddled with errors, has a high known error rate; (4) there are no standards for using the RGR's drilled soil-profile analysis technique for determining seasonal ground water presence; and (5) the wetland science has been practiced for decades by professional wetland scientists in the regulatory arena.

The court should review the agency's decision to admit "expert" testimony or reports under the *Daubert* standard. The standard of review for this inquiry is consistent with the level of scrutiny against all other agency actions—namely, the abuse of discretion standard.[20] Furthermore, it would be appropriate to apply this standard even if the RGR were to somehow fall short of the definition of scientific testimony

[19] Reliance on inadmissible evidence is "a clear error of judgment" and results in a decision that is the product of "illogical" or inconsistent reasoning, and fails to consider an important factor relevant to its action.
[20] *See, General Electric Co. v. Joiner*, 522 U.S. 136 (1997).

because these factors may apply to non-scientific testimony, meaning "the testimony of engineers and other experts who are not scientists."[21]

To further illustrate egregiousness abuse of discretion, there are various valid scientific ways to determine water tables occurring underground—*e.g.*, the U.S. Army Corps of Engineers' (USACE) published methodology and regulatory standards for wetland identification.[22] The TRPA even deviated from their own established internal procedures,[23] developed to be more protective of wetlands in the Tahoe Basin—*i.e.*, "stream environment zones." Their method only requires two criteria of the three-part test (hydrology, vegetation and soils) for wetlands established in the USACE regulations for applying protective standards and limitations—and may have passed muster with regard to the *Daubert* standard when developed by Ms. Carpenter and others for TRPA regulatory purposes.

The staff reviewer—Julie Roll—lacks the qualifications to assess wetland science delineation reports, and approved and forwarded an unqualified recommendation to the TRPA Governing Board.[24] The TRPA's violation of procedural due process carried the substantive effect of depriving me of time to develop and present this evidence and argument into the record of the Appeal. My Affidavit goes into extensive detail concerning the deficiencies of the RGR to serve as a soils/hydrological report (AR0743-AR0746), as does the Statement of Appeal at AR1245-AR1296, and my testimonies before the Legal Committee (AR3399-AR3400) and the Governing Board (AR3414-AR3415) .

I. Claim 9—Prohibition of Excavation Interference with Ground Water Table. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 9 concerns prohibition of excavation that may interfere with ground water. Code § 33.3.6.2. includes letters A & B as independent requirements. Claim 9 concerns unmet requirements and criteria for an exception to prohibitions against ground water interference associated with excavation greater than five feet, and approval on the basis of Code § 33.3.6.A.2., letters a. & d.

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[21] *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

[22] Environmental Laboratory. (1987). "*Corps of Engineers Wetlands Delineation Manual*," Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

[23] *Supra* note 10 (an agency action that departs from a prior policy without acknowledging the change, or that creates an "unexplained inconsistency" with prior policy is generally viewed as arbitrary and capricious).

[24] More generally, the TRPA often does not have the scientific subject matter expertise to mitigate and filter defective or inchoate development applications from reaching the Governing Board for approval.

WHAT THE LAW REQUIRES: If excavation will interfere with or intercept a seasonal high water table, the excavation is prohibited unless TRPA finds a proposed action meets at least one criterion (of ten) listed for an exception to the prohibition(Code § 33.3.6.A.2).

WHAT TRPA DID: Issued the August 5, 2022 exception approval letter citing two subsections of Code § 33.3.6.A.2, parts a. & d., as the bases for approval.

A Code citation does not constitute a "finding," because it sheds no light on the considerations, analyses and decisional processes that support an administrative action. What I didn't find in the documents available online prior to August 5, 2022 is the TRPA's findings to support the exception for deepened excavation. I challenged the lack of actual "findings" in the Affidavit filed (AR0734-AR0741), in the SOA, and in testimony. I asked them to prove "Excavation is required by the International Building Code (IBC) or local building code for minimum depth below natural ground. . . ." based on IBC limitations I discussed at length in my Affidavit prohibiting such design constraints (AR0738-AR0734). The SR states TRPA doesn't "strictly" apply that part of the Code, instead granting deference to designers and local building officials at its discretion (AR1589). This is a frank admission of illegality because TRPA has no discretion to ignore the Code.[25] There were no "findings" with facts and analyses supporting that the prohibited ground water interference was "necessary for public safety and health" prior to August 5, 2022 based on the AR.[26]

J. Claim 10—Conflict of Interest Violations. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 10 concerns conflict of interest violations by TRPA in employing staff or contract workers to bolster the deficient application by Verizon.

WHAT THE LAW REQUIRES: In ROP § 8.4: "Employees shall not accept . . . present compensation or arrange for future compensation for services already performed or to be performed, that give rise to an actual conflict of interest or that create an appearance of a conflict of interest."

[25] "If the regulation's text is unambiguous, [the court] give[s] no deference to the agency's interpretation: '[t]he regulation then just means what it means'" (*Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019)). *See also*, *Attias v. Crandall*, 968 F.3d 931, 937 (9th Cir. 2020); *Larson v. Saul*, 967 F.3d 914, 922 (9th Cir. 2020), cert. denied sub nom. *Larson v. Kijakazi*, No. 20-854, 2022 WL 199379 (U.S. Jan. 24, 2022)).

[26] That's the end of the story in my view. For TRPA it was the lead-in to… turning the Appeal hearing basis on its head, illegally, to produce and insert the needed and missing findings of fact into the AR long after the defective staff approval.

WHAT TRPA DID: In the absence of a soils/hydrological report by a qualified professional for the exception, subordinate employees paid by TRPA investigated the site of the excavation as I described long after the August 5, 2022 approval, prepared reports supporting the employer's prior determination, and used these inadmissible reports in the Appeal hearings. See additional extra-record information in the MSAR supporting this violation at pp. 13-14. No subordinate employee should ever be placed in such a position by the employer as a matter of law and ethics.

K. Claim 11—Impervious Land Coverage in Excess of Limitations. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 11 alleges the final plan revisions stamped by TRPA allowed impervious land coverage in excess of what the Board granted prior approval for due to plan-checking errors.

WHAT THE LAW REQUIRES: Land coverage planned, approved or built shall not be in excess of allowable land coverage based on a verified coverage analysis by TRPA.

WHAT TRPA DID: Staff, approved revised construction plans that allowed building impervious surfaces in excess of coverage limitations approved by the Governing Board. The revised plans with the excess coverage were subsequently approved by the Governing Board in denying the Appeal.

Meeting coverage requirements for any TRPA project is of critical importance to the public, as I briefed in my SOA (AR1305-AR1306) and FAC at pp. 21-22. In my SOA I developed coverage computations for the revised plans, showing the work for others to follow.[27] I measured lengths with a ruled tape of printed "screenshots" taken from scaled plans online, as the revised plans (public documents) provided to me electronically could not be printed! I had to convert scales and compute the true coverage values. (TRPA employs non-engineers to check and approve engineering plans, reports and computations, improper under the rules of the California Board for Professional Engineers and Geologists).

The AR shows that the plans were approved in haste to get the revised Permit out on the Verizon Project by staff engaged on another pressing assignment (AR0330 & AR0329). TRPA staff was unable to understand the engineering analysis I presented for the record and make a reasoned determination, and wrote falsely to the Board that the underground concrete foundation was not considered coverage

[27] Exhibit 6 to my SOA is found in the AR at AR1356-AR1360 and marked-up as Attachment I to the SR (AR1975-AR1979).

(AR1977). I pointed out TRPA's own verification of allowed coverage indicating the foundation is coverage (AR0649 & AR1975—*see,* "CELL TOWER FOOTING in coverage data table"). The Board overlooked all this and denied the Appeal.

TRPA couldn't have computed the coverage correctly because its own coverage allocation for the foundation was misunderstood by staff. In the table of verified approved coverage for the Project no coverage remained unused on the site, thus no room for error. That's okay until the errors were exposed, and the coverage exceeded strict limitations. Based on the AR, TRPA provided no valid refutation of my coverage analysis showing coverage in excess of allowable amounts, which is illegal to approve.

L. Claim 12—Illegal Appeal Hearing Voting Procedure. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 12 alleges the voting procedure employed by the Governing Board for the Appeal hearing was incorrect and not in accordance with Compact law.

WHAT THE LAW REQUIRES: The Appeal hearing to grant a variance, an exception, to the Code of Ordinances (Code) must be conducted under Compact Art. III(g)(1) which states, in relevant part: ". . . for granting variances from the ordinances, rules and regulations, the vote of at least four of the members of each State agreeing with the vote of at least four members of the other State shall be required to take action. . ."

WHAT TRPA DID: Over Appellant objections, TRPA applied Compact Art. III(g)(2) for the vote. The voting procedure used is beyond dispute; see the Staff Report for the Appeal hearing (AR1584) which clearly specifies the second voting procedure, five of nine. This procedure was reasserted as correct by Mr. Marshall in testimony over my objections without reference to the Compact Articles, again misinforming the Board and shedding no true light on the point of order I raised in testimony. The simple reason the voting procedure used is incorrect is because the Appeal was filed in opposition to the August 5, 2022 granting of a variance (aka exemption, or exception herein) to a Code prohibition for a plan revision to the Permit approved on appeal by the Governing Board on March 23, 2022.

The Compact is clear and specific. There is a conflict between the Compact language in Art. III(g)(1) and ROP § 2.4.4, as follows in relevant parts. *See*, Art. III(g)(1) quoted above. The ROP § 2.4.4 states: "B. Four Votes from Each State…[to] 4. Act upon an Executive Director Code interpretation…" then throws a confusing and illegal overlay on the statute with ROP § 2.4.4., "C. Extraordinary Project

Vote (5/9)…[to] 5. Approve or modify a project;" indicating five California-member votes of nine total votes are needed. The arbitrary staff insertion of "or modify" into subsection C.5., makes it inconsistent with the voting prescribed by Congressional statute (possibly since the early ROP adoption decades ago) and was used at the Appeal hearing to illegally bolster the record. Clearly the improper TRPA rule enactment fails under hierarchy-of-law considerations; the statute preempts. TRPA's improper use of Compact Art. III(g)(2) demonstrates a clearly unlawful approach to implementing the vote, which must be set aside as must the addition of the words "or modify" to ROP § 2.4.4.C.5. be set aside.

IV. PRAYER FOR RELIEF

The theory of law applied here is a plain reading and interpretation of the statute and applying the lessons learned in high school civics class. Namely, that we live in Republic under a binding Constitution for the United States, established following a revolution to limit government authority and intrusions on the freedoms and liberties of the people under natural law and as established in the Bill of Rights. The founding fathers knew governments left unchecked by the public in the Republic could become tyrannical, and thus it is the right and duty of every citizen therein to exercise their legal rights for redress of grievance. This is particularly true of misconduct by public officials, which the federal law supports, including civil liability.

Compact Art. VI(l) states:

> 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. Any such person is subject to an additional civil penalty not to exceed $5,000 per day, for each day on which such a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.

Examining the elements, that TRPA is a juridical "person"[28] is accepted *juris* prudence. TRPA violated the provisions under claims. "[O]r of any condition of approval imposed by the agency" has a

[28] A "person" subject to liability can be a local governing body (*see, Waggy v. Spokane County*, 594 F.3d 707, 713 (9th Cir. 2010)). TRPA is also an "agency" within the meaning of the Administrative Procedures Act (APA) (5 U.S. Code § 551(a), and TRPA alleges to be held to portions of the APA in TRPA Rules of Procedure § 15.3.1. The Compact supersedes the APA where the two conflict (*see*, *Edmond v. United States*, 520 U.S. 651, 657 (1997) (where

dual interpretation and may be thought of here as the Code imposed by the agency on itself as a condition of approval, *e.g.*, a required finding in order to approve a project. TRPA violated the latter as set forth in the claims, so is subject to the cited penalties, including for each day on which the excess coverage violation persists. Considering the nature of the violations, which were both willful and negligent, the court "shall impose a greater penalty" The egregious nature of the violations includes knowing and willful violations of law, due process rights, civil rights to free speech (blocking comments from publication), prejudicial actions, and arbitrary and capricious actions in violation of law. For one example, the staff wrote and testified the foundation was not coverage (AR1977). The TRPA coverage table in the plans indicates it is (AR0649); the latter is correct, but the Board negligently approved the incorrect interpretation. While the violation of coverage allowances by staff before the hearing may have resulted from inadvertence or simple negligence, when the deficiencies and contradictions were exposed at hearing and the Board simply moved past them believing the staff in light of the evidence presented, that was a willful or grossly negligent violation. The record is replete with willful and grossly negligent violations, as discussed herein (and in my Motion to Supplement the AR).

The federal Clean Water Act (CWA, 33 U.S. Code § 1365) has provisions for citizen lawsuits and sets ample precedent for the interpretation of Compact civil liability that follows. The CWA was adopted by Congress in 1970, shortly following the adoption of the Compact in 1969, so these ideas were in play at that time in Congress, that citizens should be able to sue for redress of violations by the agency. The CWA sets forth similar provisions as the Compact:

> Except as provided in subsection (b) of this section and section 1319(g)(6) of this title, any citizen may commence a civil action on his own behalf—
> (1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or
> (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.
> The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title. . . .

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a specific provision conflicts with a general one, the specific governs)).

> (e) Statutory or common law rights not restricted
> Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

With adoption of the CWA Congress got more specific about the matter of empowering citizens than in the Compact. However, the liability framework in the Compact is similar, a precursor that was improved on in the CWA. Public officials are expressly the litigation target together with "any person." In the same way, we have federal (interstate) waters at Lake Tahoe, and a bi-state Compact, but a more limited authority than under the nationwide CWA provisions (which also apply at Lake Tahoe). Congress clearly intended that the federal waters would be protected in this way. There is nothing in the plain language of the Compact law to shield TRPA from civil liability.

In my FAC's Statement for Relief (cite pp) I set forth a proposal for the Court to consider appointing a "special master" funded by the civil liability imposed to oversee TRPA approval actions. The Defendant has objected to that proposal (Answer to FAC, March 29, 2023), stating the court has no authority. TRPA doesn't want to be held accountable to the court under their own laws and rules. If the TRPA did not plan to continue its abuses, there would be no issue with having oversight by a special master. In the alternative, if the special master is not granted or possible, the liability must be paid to me.

Relief is requested for the 153 standing violations tallied in the FAC, with civil liability increasing by $5,000 daily for each day the tower, with its excess coverage, persists in violation. For purposes here, the tower foundation construction is deemed complete as of October 3, 2022, based on photo evidence I possess and the daily violation tally begins October 3, 2022.

For all the foregoing reasons, I seek summary judgment in my favor, with relief granted by imposing the maximum penalties on TRPA for bad faith, and dismantling the tower on the bases I've justified. I also seek relief from cost to prepare the AR (unknown) and the $400 court filing fee. For this relief, I pray.

[i] TRPA has issued nearly 1,000 permits annually in recent years. The fraudulent AR exemplifies how Lake Tahoe region's environmental qualities are being undermined one permit at a time, with everyone from Congress down failing to understand, some $660 billion of public money reportedly spent on ecologic restoration and counting, and the jury still out as to whether the restoration of Lake Tahoe will happen under TRPA and all involved.

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Plaintiff, in propria persona

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EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALAN MILLER,

Plaintiff,

v.

TAHOE REGIONAL PLANNING AGENCY,

Defendant.

No. 2:22-CV-02113-KJM-AC

MOTION FOR SUMMARY JUDGMENT

> (e) Statutory or common law rights not restricted
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Allan M. Allen

July 24, 2023

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BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALAN MILLER,

Plaintiff,

v.

TAHOE REGIONAL PLANNING AGENCY,

Defendant.

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

OPPOSITION TO CROSS-MOTION FOR SUMMARY JUDGMENT

AND

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Plaintiff's Reply And Opposition To Defendant TRPA's Opposition To Plaintiff's Motion To Supplement The Administrative Record p.6.

I. INTRODUCTION TO THE TRPA RABBIT HOLE

Plaintiff adopts by reference all prior pleadings, motions, and exhibits (Fed. R. Civ. P. 10(c)). Pursuant to Fed. R. Civ. P.7(a)(4), Local Rule 261(d), Judge Claire's Standing Orders, the June 8, 2023 Order, and the August 30, 2023 Stipulation and Order to Extend Summary Judgment Deadlines, Plaintiff Alan Miller submits this Reply and Opposition (REPO) motion against Defendant Tahoe Regional Planning Agency's (TRPA) Combined Opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment (OSJ or ECF 35). *See* the Tahoe Regional Planning Compact (Compact) Art. I.(a), esp. (1) – (7), and (10). *See* esp. Art.(c) from which this litigation stems based on the administrative record (AR, ECF 22, 23).

Briefly characterizing ECF 35, sophistry throwing dust in the eyes of the court, the Defendant proposes a model for judicial review which would grant it wide deference and discretion while eviscerating any court review discretion. Herein I will prove beyond dispute that TRPA has enacted illegal regulations that subvert the Compact and is running roughshod and lawlessly over the public in abandonment of its charter through TRPA *following* illegal rules it has enacted, as well as *deviating* from them in bad faith. These violations have resulted in personal injury to the liberties and legitimate interests of me and others through deprivations of rights, and injury to the environment of the Lake Tahoe region which I hold sacred. This case will take a strange turn based on additional research and findings that support summary judgment in my favor.[1] The court has the opportunity and duty to strike down the illegal regulations and restore Lake Tahoe and the region by restoring the rule of law. The future of Lake Tahoe and protection of its precious values, beyond measure, is literally in your hands.

II. VIOLATIONS OF LAW

A. AGENCY REGULATIONS THAT VIOLATE STATUTE

1. Agency Regulations Contrary to Compact Law Are Invalid

It is a settled matter of law that an agency can't adopt and implement regulations that subvert its organic statute and the will of the enactor(s).[2] In view of its longstanding, ongoing implementation of illegal regulations the court should grant no deference to TRPA in this case, nor bow to its discretion. I implore the court to strike down the invalid regulations, invalidate the approval of the tower and provide remedy through special master oversight of TRPA.

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[1] With my unexpected discovery of the regulations in violation of the Compact, my prior Motion for Summary Judgment (MSJ) and Motion to Supplement the Administrative Record (MSAR) must be reinterpreted somewhat by the court, granting me deference concerning such things as the serial judicial review model I discussed at MSJ p.2,7-p.3,14. The fact that TRPA doesn't follow such a process under the illegal regulations bolsters discussions herein of concepts of violations of basic civil rights through faulty regulations.

[2] *Decker v. Northwest Environmental Defense Center*, 568 U.S. 597, 608 (2013) (Regulations, in order to be valid, must be consistent with the statute under which they are promulgated; Case becomes "moot" only when it is impossible for a court to grant any effectual relief whatever to the prevailing party); *U.S. v. Larionoff*, 431 U.S. 864, 873 (1977) (In order to be valid, regulations must be consistent with the statute under which they are promulgated); *Credit One Bank, N.A. v. Hestrin*, 60 F.4th 1220, 1231 (9th Cir. 2023) (Agency regulation can't trump Supreme Court or Congress).

Illegal delegation is a clear abuse of discretion that disenfranchises the public in this way: While the Compact sets the expectation that approving a "variance" or "project permit" requires a recorded vote from the Board members (BMs), which must occur at a noticed public meeting with a published agenda, the regulations dispense with all of that for adopting *most* variances and project approvals, with TRPA processing upwards of 1,000 permits annually in recent years, tens of thousands of approvals over the decades. Under the regulations TRPA adopted for itself, all required public participation is precluded unless a costly appeal is filed and a hearing is granted. It is under these illegal rules that TRPA claims no public noticing of the variance approval was required for the variance approval (AR1587), disenfranchising the appellants and the public in general.

2. Regulations That Illegally Delegate Governing Board Authority To Executive Director And Hearing Officers For Variance And Permit Approvals

At the Appeal I said I I don't agree with the voting procedure is in accord with the Compact."[3] Art.III(g) provides voting procedures that are at issue in this case. For approving "variances" from the Code, Art.III(g)(1) is specified, while Art.III(g)(2) provides voting procedures for project approvals. A "vote" may only occur on an application for a variance or project by placing the matter on an agenda for a public meeting of the Governing Board (GB) with a public notice as required, and opportunity to comment on the variance or project application and otherwise participate in the public meeting concerning the matter, with the "vote" following that.

Decades ago, TRPA adopted its Code of Ordinances (COO) and Rules of Procedure (ROP) (jointly, agency-adopted regulations, or simply regulations herein) with provisions contrary to the Compact for issuing approvals of variances and projects. These illegal regulations assign the Executive Director (ED) and the Hearings Officer (HO) the discretionary authority to issue variances and project approvals in the absence of a "vote" by the BMs at a GB meeting. Any such exercise of authority is contrary to Compact delegation clauses[4] and illegal and therefore a prejudicial abuse of discretion.

In enacting and implementing the regulations TRPA deprived the people of all their fundamental civil rights appurtenant to a BM "vote" in the absence of an Appeal hearing, which I complained of bitterly in my Notice of Appeal's (NOA) affidavit (AR0748). While the adoption of these regulations was likely done for agency efficiency[5] undreamt of by the enactors, the result is a regulatory scheme contrary to Compact law that deprives the public, myself included, of its fundamental civil rights to address the BMs at a duly noticed public meeting, and eliminates prescribed BM vote recording concerning approvals of

[3] *See* AR3414. TRPA audio recording at 2 hours, 51 minutes, *available at* https://www.trpa.gov/2022/09/?cat=9.
[4] Art.X., (b) and SEC 4.
[5] *Stanley v. Illinois*, 405 U.S. 645, 656 (1972) (the Constitution recognizes higher values than speed and efficiency; the Bill of Rights in general, and the due process clause in particular, were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency and efficacy…).

proposed variances and project permits, in the absence of an appeal filing and payment of a non-trivial fee (currently over $1,200) for all illegally delegated approvals not exempt from regulation. The TRPA regulations are riddled with inconsistencies with the Compact in all categories of projects not exempt from permit requirements, as well as for variances from the ordinances in the COO.

The following regulations contain illegal delegations that are contrary to the Compact's "vote" requirements and are therefore invalid.[6] From the COO: 2.2.2., A.2 - C.2, E.2., F.2 & G. The absence of D.2. for "Public Service" facilities is highly significant because the COO provides no support for the decisions from: (1) the HO Appeal hearing for the Project held in October 2021; and (2) the March 2022 Governing Board (GB) Appeal hearing that followed it. The court should give these decisions no deference and vacate them, together with these regulations. Also, COO 2.2.3. From the ROP: 13.9.; 5.16. (except as applies to "exempt" activity); 5.17. (applicable to ED); 5.20.; 6.21.; 9.19.5. – 9.19.7.; 10.6.2.; (appeals) 11, 11.1., 11.2.; 11.5., 11.6.; 12.7.2.; & 14[7]. All of these regulations inconsistent with the Compact were enacted with a prejudicial abuse of discretion as defined by the Compact.

By its use of dual "final action" language in the regulations contrary to the intent of Congress and the states, in the absence of an appeal on a variance or project approval by the ED or HO, the approval currently stands in fact and legally (improperly) as a "final action" for all purposes under the regulations—but not under the Compact requirements for any project or variance. TRPA chose to call its delegated approvals "final action" in the regulations because that is precisely what they are (functionally) after the 21-day appeal period has passed. Then, TRPA invokes limitations that bar further appeals or litigation as untimely on the delegated "final action," thereby depriving applicants, the general public and appellants of their due process rights for redress. Therefore, the delegated approval functions to constitute "final action" under the operation of law for the vast majority of variances and permits.[8]

3. How The Regulations Disenfranchise The Public And Violate Civil Rights To Due Process And Equal Protection

With no cost to attend and participate in a public meeting and adjudication of a variance request or project approval, TRPA charges a fee currently in excess of $1,200 to appeal a decision of the ED or HO and request a hearing before the GB, a sizeable sum meant to chill public input and exercise of due process liberties, rights and privileges. No fee paid, no appeal. If an

[6] These are the regulations I am aware of that are inconsistent with the Compact. To quote them would far exceed my brief page limit. Nearly all bear directly on, or flow from, this Project or case. The following are included, as follows, for completeness. COO 2.5. & 2.6. are suspect concerning interagency agreements and illegal delegations *sans* review (*see* ROP 13.9.2.); and all of COO 53 is suspect, esp. 53.6.4. & 53.6.5; ROP 5.14 (applicable to ED).

[7] I pointed out regulatory inconsistencies TRPA did not address in MSJ 16; 9.

[8] The Compact does not allow that the ED or HO can approve a variance or project just because it's not appealed. ALL such approval authority over variances and projects was vested with the GB through voting at its public meetings, with TRPA charged to follow the law Congress established.

appeal is filed, TRPA can then proceed with justifications post-*hoc* to the staff approval and disenfranchise its detractors at a subsequent appeal hearing, as in this case. The first essential of environmental review is notice and public involvement.[9] By dispensing with public notice,[10] TRPA thwarts the public's opportunities to participate in decision-making processes[11] prior to the staff's so-called "final action" when the opportunity to freely address the GB orally or in writing pre-approval is a liberty the public must freely enjoy under the Compact and is deprived of by the regulations.

4. Regulations Omit Reference To Variance and Approval Requirements Germane To This Case

Art.III(g)(1) refers to "variances from the ordinances" whereas relevant TRPA regulations refer to "exceptions" and "exemptions" throughout the COO and ROP, not "variances." TRPA has no means to approve a "variance" under its regulations, yet does so routinely with these functionally equivalent words for TRPA (and court) purposes. The "exception" approval given August 5, 2022 for the deeper excavation under COO 33.3.6. must therefore constitute a "variance" approval for the Project variance to impact groundwater resources (henceforth "Variance").

B. AGENCY ACTIONS THAT VIOLATE STATUTE OR REGULATIONS

1. Violations of Mandatory Administrative Requirements are A Prejudicial Abuse of Discretion As Defined by the Compact[12]

This entire Variance approval, Plan Revision approval, and Appeal proceeding was an illegal sham, a miscarriage of justice carried out under color of law, and the approval issued by the GB in a manner contrary to law through the Appeal denial must also be overturned as a matter of law and a prejudicial abuse of discretion.

2. Prime Examples Of Violations In The AR And My Court Filings; A Non-Exhaustive Listing

The actions in the header above could fill a volume in this action alone. There is little need to repeat the findings of my

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[9] *ForestKeeper v. Elliott*, 50 F.Supp.3d 1371, 1377 (E.D. C.A. 2014) (Council on Environmental Quality (CEQ) regulations mandating public involvement in preparing environmental assessment (EA) and diligent efforts to involve the public in preparing and implementing NEPA procedures are substantive rules whose violation may invalidate an agency action).

[10] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 321 (1950) ("Publication may theoretically be available for all the world to see, but it is too much in our day to suppose that each or any individual beneficiary does or could examine all that is published to see if something may be tucked away in it that affects his property interests. We have before indicated in reference to notice by publication that, 'Great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact.'").

[11] It becomes the task of the public to track down unnoticed applications and staff approvals, through TRPA's complex online application tracking systems; catch us if you can, and it will cost you. It does not publish lists of applications received and approved by staff in a readily-accessible online format, preferring to do its work for the public in the dark. One must have specific Project information to look up a project or variance application. Chilling.

[12] *U.S. v. Nixon*, 418 U.S. 683, 695 (1974) (so long as regulation was extant, it had force of law, Executive Branch was bound by it, and United States as sovereign composed of three branches was bound to respect and enforce it); *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (objecting to administrative body's "failure to exercise its own discretion, contrary to existing valid regulations"); *Service v. Dulles*, 354 U.S. 363, 388 (1957) ("Secretary...could not, so long as the Regulations remained unchanged, proceed without regard to them"); *Vitarelli v. Seaton*, 359 U.S. 535, 539-40 (1959) ("Secretary...was bound by the regulations which he himself had promulgated").

MSJ and MSAR. For the sake of brevity, these are examples about which more can be written.

Complete application requirements are unmet (*see* ROP 5.2.1–5.2.8 concerning requirements for a complete application). The regulations are nondiscretionary as to what must be provided for a complete application. Only the *contents* of the elements may be reviewed with discretion to determine if the requirements are met. This goes for all application elements, including many TRPA did not obtain prior to "final action" by the staff (*see* AR2979 & AR3399-AR3400 for discussion).

Environmental review requirements are unmet (*see* MSJ 10:14-11:13). TRPA cites inapplicable regulations (OSJ 17:7-9; *see* AR2970 & MSJ 10:6-13). There was no environmental document or review of any kind in the AR and therefore nothing to "supplement", as I discussed. The Compact's purpose is to ensure that TRPA takes a "hard look" at environmental consequences of its proposed actions before deciding to proceed on a project,[13] and probable environmental consequences of a project when brought to its attention by the public, and did not. Environmental law mandates public involvement and diligent efforts to involve the public in preparing implementing environmental review procedures.[14] For meaningful consideration during the environmental review process, an issue need be raised using precise legal formulations, as long as enough clarity is provided that a decision maker understands the issue.[15] TRPA may not defer consideration of these consequences to a later date, and the Compact requires consideration of potential impact before action takes place.[16] TRPA has no programmatic environmental impact statement (EIS) or other document to satisfy its obligations under the Compact for this site-specific Project.[17] TRPA cannot ignore cumulative impacts[18] from multiple revisions of the same project, or multiple similar projects, and may not piecemeal a project into multiple actions, as here, to duck just below the threshold of more stringent environmental review.[19] These concepts refute TRPA's contentions on Claims 1 (OSJ I.C.1.) and 9 (OSJ 18:18), and Claims 4, 6 & 7 at OSJ 16:8, 16:22, 17:3-5 & 17:23, respectively. There is a cause of action facially created under the Compact's judicial review provision where any aggrieved person may stand to sue with its zone of interests whenever TRPA violates its rules or does not proceed in a manner

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[13] *ForestKeeper v. La Price*, 270 F.Supp.3d 1182, 1211 (E.D. C.A., 2017) (NEPA's purpose is to ensure that agencies take a "hard look" at the environmental consequences of their proposed actions before deciding to proceed).

[14] *Id. See also*, *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979) (Interpretation of NEPA by Council on Environmental Quality is entitled to substantial deference); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 355-356 (1989) (Forest Service could rely on Council on Environmental Quality regulation).

[15] *Protect Our Communities Foundation v. LaCounte*, 939 F.3d 1029, 1037 (9th Cir. 2019).

[16] *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

[17] *Supra* note 15.

[18] 40 C.F.R. §§ 1501.3(b), 1501.9(e)(1), & 1508.25(a)(2) ("Cumulative impacts" are those impacts "that result[ ] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency...or person undertakes such other actions").

[19] *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 894 (9th Cir. 2002) ("connected," "cumulative" and "similar" agency actions must be considered together in single review document to prevent agency from dividing project into multiple actions, each of which individually has insignificant environmental impact, but which collectively have substantial impact); *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1313 (9th Cir. 1990) (NEPA requires that where several actions have cumulative or synergistic environmental effect, that consequence must be considered together in environmental review).

required by law.

When new information later shows that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, TRPA must supplement its environmental review to document the agency's "hard look" at new information.[20] TRPA didn't consider the information prior to the staff approval, evaluating its impact, and supporting its decision not to supplement with a statement of explanation or additional data. TRPA is barred from now supplementing environmental review to analyze information the agency knew at the time it failed to conduct the original environmental review.[21] New information may alter results of its original environmental analysis, and TRPA must continue to take hard look[22] at environmental effects of its planned action, especially when it's sufficient to show that remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered.[23] The AR demonstrates that TRPA systematically failed to act under this duty as required by law, which is a prejudicial abuse of discretion *per se*.

TRPA failed to take a hard look at Project impacts on endangered and threatened wildlife in violation of environmental review procedures, which invalidates agency action. On multiple occasions throughout the approval process, the public raised numerous issues with enough clarity that TRPA understood the issues raised. The information provided included peer-reviewed scientific literature on specific impacts of the Project to human health, flora and wildlife.[24] It also included information about wildlife sightings in the Project vicinity.

TRPA ignored multiple reports that the federally endangered Sierra Nevada Yellow-Legged Frog[25] may be living in the nearby stream environment zones and could be affected by the Project (AR2900-AR2964 & AR2788-AR2853).[26] TRPA failed to respond to a photographic report of this species sighted less than 500 feet from the Project (AR2954-AR2956 & AR2843-

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[20] *Supra* note 13.
[21] *Id.*
[22] *Cf., Conservation Congress v. Finley*, 774 F.3d 611, 621 (2014) (Courts employ a rule of reason to decide whether an environmental review contains a reasonably thorough discussion of the significant aspects of probable environmental consequences, as required by NEPA; this standard is considered essentially the same as the standard of abuse of discretion, and the court's analysis under it consists of insuring that the agency took a hard look at the environmental impacts).
[23] *Supra* note 15.
[24] New information may combine with prior information provided by public to trigger probable harm to wildlife and fauna. Prior information is *available at* https://tahoeregionalplanning-my.sharepoint.com/:f:/g/personal/gbalkwell_trpa_org/Eq84iynlGG5MkXinedlYKAIBBqwijVBTJCJC3hqhCs5uxQ?e=X8HsS7. "Judicial notice is appropriate for records and reports of administrative bodies" (*United States v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 955 (9th Cir. 2008).
[25] 50 CFR § 17.11(h) ("The 'List of Endangered and Threatened Wildlife' is provided in the table in this paragraph… Common name[:] Frog, Sierra Nevada yellow-legged | Scientific name[:] *Rana sierra* | Where listed[:] Wherever found | Status[:] E[ndangered] | Listing citations and applicable rules[:] 79 FR 24255, 4/29/2014; 50 CFR § 17.95(d). CH")).
[26] I mentioned my own concern about the impact of the project, on *inter alia*, "frogs" (*E.g.*, AR0743,AR1320, AR 1604, & AR2748).

AR2845).[27] This is outrageous in light that the Tahoe region contains critical habitat for the Sierra Nevada Yellow-Legged Frog[28] yet, for over a decade, TRPA has refused to even acknowledge this fact by including the species in its Environmental Threshold Carrying Capacities[29] for wildlife as mandated by the Compact. Because Congress consciously decided to give endangered species priority over the "primary missions" of agencies under federal law,[30] TRPA did not have the discretion to ignore this information[31] or proceed with the Project without appropriate environmental review[32]—which may have required soliciting a biological opinion.[33] This abuse alone is grounds for the court to invalidate the Project approval.[34] Nor can it be said that a "reasonable mind might accept" this particular evidentiary record as "adequate to support a conclusion"—that the project risked no significant effect on the environment—as required under the "substantial evidence" standard of review.[35] That would be incorrect.

Stay response requirements are unmet. In responding to the stay request, and passing on the opportunity to schedule a public hearing at the next meeting (MSJ 8:11-12), all the Chair must do is wait for the arrival of the SOA to schedule the Appeal hearing (ROP 11). There is no discretion. It was this failure to follow the law and premature illegal scheduling of the hearing that showed bad faith, violated due process and caused prejudicial hardships in preparing and defending the Appeal on short notice, not so much the illegal day-late response as TRPA misrepresents (OSJ 14:1-2).

3. TRPA Has Not Taken "Final Action" on the Variance Application Or The Variance Appeal

TRPA points out my SOA did not object to the voting procedure used and asserts I "therefore didn't preserve the issue" (CSJ 19:22 – 20:7). I disagree that the "error was harmless" (*id.*). I didn't know what procedure would be used as the Staff Report hadn't been published. To refute TRPA's assertion, I refer you to my testimony on p. 2, above, and AR3414.

TRPA held an Appeal Hearing on a "Plan Revision" approval in response to an Appeal filing against a variance approval.

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[27] *See also*, AR2748.
[28] 50 CFR § 17.95(d); 81 FR 59045 59119, 59076, 59096, 59099 (08/26/2016) ("Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern DPS of the Mountain Yellow-Legged Frog, and the Yosemite Toad; Final Rule") (Subunits 2D & 2E).
[29] Available at https://www.trpa.gov/regional-plan/#thresholds.
[30] *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978); *National Wildlife Federation v. National Marine Fisheries Service*, 524 F.3d 917 (9th Cir. 2008).
[31] *Supra* note 13; *see also, Credit One Bank, N.A. v. Hestrin*, 60 F.4th 1220, 1231 (9th Cir. 2023) (An agency's regulation cannot trump the Supreme Court or Congress); *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).
[32] *Bennett v. Spear*, 520 U.S. 154, 172 (1997) ("It is rudimentary administrative law that discretion as to the substance of the ultimate decision does not confer discretion to ignore the required procedures of decisionmaking").
[33] *United States Fish and Wildlife Service v. Sierra Club, Inc.*, 141 S.Ct. 777, 783-784 (2021). *Cf.*, 16 U.S.C. § 1536; 40 U.S.C. § 4332; 40 CFR §§ 402.12, 402.13, 402.14, 402.16, 1502.24, & 1508.1.
[34] *Natural Resources Defense Council v. U.S. E.P.A.*, 38 F.4th 34 (9th Cir. 2022) (When petitioners allege procedural violation, redressability prong of standing is satisfied by showing that agency decision could be influenced by procedures at issue).
[35] *Dickinson v. Zurko*, 527 U.S. 150, 162, 164 (1999) (a reviewing court reviews an agency's reasoning to determine whether it is "arbitrary" or "capricious," or, if bound up with a record-based factual conclusion, to determine whether it is supported by "substantial evidence")

See 25:8-11, where TRPA clarifies: "Moreover, the Plan Revision was not a 'variance.' The Compact limits a 'variance' to a 'variance from the ordinances or rules and regulations….' Art. III(g)(1)…" This shows TRPA erroneously acted on an appeal to a Plan Revision when the fact is we appealed a variance. (AR0731-AR0755) TRPA's introduction (OSJ 7:2) also misrepresents the facts. The Appeal was filed on the August 5, 2022 Interim Executive Director's (IED) approval (AR0269) of a Variance to code prohibiting potential interference with a ground water table *in association with* an application for a proposed Plan Revision (COO 33.3.6). The Variance approval allowed the August 17, 2022, approval of the applicant's "Plan Revision."[36]

Another interpretation the court must consider follows from TRPA conflating the Variance and Plan Revision approvals as one. The BMs were only required to vote on our Appeal application under Art.(g)(1) for the Variance. Each EID approval was separately issued as stated (CSJ 5:14 (Variance) and CSJ 5:24-25 (Plan Revision)). I was charged only one fee by TRPA when I filed my NOA concerning the Variance approval. Thus, TRPA charged me a filing fee under the ROP for my NOA on the Variance and gave me a product with multiple defects in breach of contract,[37] an Appeal hearing for a Plan Revision (voted accordingly). Since the BMs voted only once under Art.(g)(2), which is inapplicable to approval of a variance in any event, the presumed hearing and denial of the Variance Appeal must be set aside as a matter of law and a prejudicial abuse of discretion as a vote on the Plan Revision.[38]

4. Public Notice Requirements Are Unmet

No public notice was issued for Appeal hearing in compliance with ROP 12. TRPA published an agenda on its website a week prior to the Appeal hearing, but the ROP does not reference online publication of the meeting agenda as a valid means to meet applicable noticing requirements for meetings and agency actions. The AR provides no evidence whatsoever that TRPA provided any valid public notice for the Appeal hearing[39] as required by law, including to the co-appellants and other nearby property owners.[40] There's also no AR evidence of public notice for a Variance approval hearing.

5. Certified Administrative Record Is Incomplete: No Audio Recording

ROP 5.21 states: "TRPA shall maintain…the official tape recordings of any relevant Hearings Officer, Advisory Planning Commission, or Board meetings." This improperly omits the Legal Committee meetings (*see* ROP 10.6.1.D.) which

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[36] TRPA confusingly conflated the two as one throughout the proceedings (as here), with the latter issued without my awareness only five days prior to my NOA filing. I was reviewing the revised plans and information from the Project applicant online in preparing my NOA, filed August 22, 2022 for the variance approval that enabled the Plan Revision approval and the attendant unexamined adverse environmental effects I commented on in my NOA and SOA. I didn't cite the Plan Revision approval date in my NOA because I didn't know of it.

[37] *Infra* note 93.

[38] The August 5, 2023, Variance approval was timely appealed, and no "final action" has been taken on it. Despite these facts, TRPA's errors have enabled construction and operation of the macrotower at 1360 Ski Run Boulevard.

[39] These facts hold for the Project appeals before the HO in March 2022 and the GB in March 2023.

[40] I concede that no noticing of the August 5, 2022, Variance approval was required under the illegal rules of the ROP.

indicates the judicial AR "may" contain "relevant" hearing audio recordings, in conflict with the mandatory "shall" of ROP 5.21 concerning this public record. TRPA possesses existing online audio recordings (digital format) of the Appeal and Legal Review Committee hearings of September 28, 2022 which are not in the certified AR under bad-faith TRPA discretionary abuses, which may entitle us to "adverse inference" over contents of hearing transcript.[41] These egregious omissions further support my MSJ and MSAR.[42] Because there is no audio recording or transcript of the Legal Review Committee and GB Appeal hearings in the certified AR, TRPA is unable to substantiate any of its GB decision-making process leading to its denial. The court should not any give any deference to TRPA.

6. TRPA Staff Approved A Variance To The Prohibition Protecting Ground Water From Unnecessary Interference, Contrary To TRPA Assertions

TRPA begins III.C. with a claim that it did not approve a Variance[43] under COO 33.3.6.A.2. based on TRPA's sole finding: "[i]t is not expected that groundwater will be encountered in this location..." The Defendant's proposition here that no variance was given is a litigation position change warranting no deference,[44] and contrary to the fact that TRPA issued the Variance (*see* my discussion of the applicable regulations at AR 1646-1647). Summarizing that, COO 33.3.6.A.1. & B. set forth the prohibition and the soils-hydrology report requirement if there is a "reasonable possibility" for groundwater table interference (AR1605, AR1632 & AR2977). TRPA required a soils-hydrology report to cover that reasonable possibility, accepted a "soil profile" report in lieu of that and found only, "[i]t is not expected that groundwater will be encountered." "Not expected" is different than no "reasonable possibility," which the Code requires protection against. Then TRPA did a very illogical thing: TRPA issued a Variance, "excavation is allowed," citing two criteria (neither valid) to allow groundwater interference, with no supporting findings. TRPA's contention that it didn't approve a Variance is specious and without merit.

TRPA granted an exemption for any potential groundwater interference to illegally "accommodate" the client's chosen design. TRPA later marshaled one-sided evidence to support its contentions that the tower serves public safety and health while ignoring all science and evidence to the contrary without acknowledgment, including threat of fire (AR3058) and collapse from

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[41] *See, e.g., Butler v. Department of Homeland Security*, EEOC Appeal No. 07200900010 (5/27/10) (upholding an administrative judge's drawing of adverse inferences against the agency due to its failure to produce work assignment logs and its records retention policy).

[42] While the court may not consider them to support TRPA, it could sanction TRPA, make adverse inference from its failure to provide them, or demand a certified, unabridged copy of recordings by separate order to supplement the incomplete AR it improperly certified as complete. Uncertified recordings *available at*: https://www.trpa.gov/2022/09/?cat=9).

[43] *See generally*, California Government Code § 65906 on application of variances to zoning regulations.

[44] No deference warranted where agency is merely advancing litigation position, not an official interpretation of its regulation (*Kisor v. Wilkie*, 139 S. Ct. 2400, 2417 (2019) ("a court should decline to defer to a merely convenient litigating position"); *United States v. Trident Seafoods Corp.*, 60 F.3d 556, 559 (9th Cir. 1995); *see also, Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1155–56 & n.34 (9th Cir. 2010); *United States v. Able Time, Inc.*, 545 F.3d 824, 836 (9th Cir. 2008); *Alaska v. Fed. Subsistence Bd.*, 544 F.3d 1089, 1095 (9th Cir. 2008)).

snow loads unconsidered (*see* AR2872 & AR3060). That does not accord with responsible action a reasonable mind might accept in light of the whole record. TRPA's cherry-picking of the available safety and health data illegally distorted the facts to disenfranchise the appellants in this case (example).

TRPA allowed the applicant to avoid the expense and trouble of producing a *bona fide* soils-hydro report, or any vegetation protection report at all, nor did TRPA make any specific findings[45] for management of excess soils pursuant to COO 33.3.6.B.(1. - 3.) & 33.4.2.[46] With alleviating the hardship or burden of producing all of the reports required by law for excavations deeper than five feet, the IED approved the Variance application in an abuse of discretion.

7. TRPA Prejudicially Abused Its Discretion In Accepting And Relying On The Soil Profile To Ensure Prevention Of Groundwater Interference

Inferences can be drawn from the supplemental soil-hydrology reports. TRPA notes (OSJ 5:7-8) the Project permit's Special Condition F, and that I didn't appeal the permit. That is inaccurate and irrelevant.[48] In II.B.4 (OSJ 6: 13) TRPA states: "During the excavation, TRPA contracted with a Certified Professional Soil Scientist to observe the soil conditions and look for signs of groundwater. AR1269-1271, 1362." This is a really a shameful admission that TRPA lacks the in-house expertise to implement its own regulations for protecting groundwater tables from interference. TRPA had to hire an outside consultant to make further field investigations for a qualified determination long after its staff's approval of the Variance. Groundwater delineations require special scientific expertise or it wouldn't have hired the outside consultant, and TRPA lacked a staff groundwater expert to testify at the Appeal hearing. It should therefore be granted no deference with regard to its groundwater determination on the basis of agency expertise it lacks in light of the whole record.[49]

If the "soil profile" TRPA relied on was in fact "substantial evidence" upon which to base a decision concerning potential

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[45] *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 517 (1974) (An administrative grant of a variance must be accompanied by administrative findings. … Party seeking variance must shoulder burden of demonstrating … subject property satisfies requirements … neither administrative agency nor a reviewing court may assume without evidentiary basis that the character of neighboring property is different… A change in nature of region is a proper subject for legislation, not piecemeal administrative adjudication by variance boards; Absent affirmative showing, variance granted amounted to kind of "special privilege" explicitly prohibited by law; "whereas the adoption of zoning regulations is a legislative function, the granting of variances is a quasi-judicial, administrative one. If the judiciary were to review grants of variances superficially, administrative boards could subvert this intended decision-making structure…courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare").

[46] "additional engineering, geologic…or other materials necessary to determine and evaluate project area conditions and the effect of the grading on adjoining properties, public rights-of-way, and the public welfare."

[48] I assisted in the appeal by Eisenstecken's appeal currently in litigation as a member of co-plaintiff Tahoe for Safer Tech. TRPA's motion to join these as related cases was denied. In the NOA and affidavit I filed I didn't contest the permit as previously approved, so the relevance here escapes me.

[49] This situation is, by specific analogy, like having the U.S. Army Corps of Engineers conduct the entire regulatory program related to discharges of dredged or fill materials to waters of the U.S. under Clean Water Act section 404 without a single certified, qualified wetland (groundwater) delineator on its staff. It's just absurd, as are TRPA's assertions about the soil profile constituting substantial evidence.

groundwater interference then all the TRPA consultant would have had to do is review the soil profile and make a determination based on it. No qualified soil scientist would make such a claim. The consultant needed additional evidence not available before the staff's Variance approval upon which to base a reasoned, scientific determination, and such evidence was primary, not merely confirmatory of the soil profile prepared and approved by unqualified professionals. The staff's initial determination was not supported by the soil profile method.[50]

However, the defects happening at the staff level are pervasive and are capable of repetition, yet evading review.[51] Consider: They don't follow their rules or make written determinations of fact and charge $1,200 when challenged by an appellant (me). Then they can hire outside experts and make post-*hoc* rationalizations to rectify defects, render prior defects moot, and escape review, only to repeat the error for the next applicant. That's an abuse of discretion.

In refuting the inapplicability of *Daubert* (OSJ 18:9-15), to attempt to escape any review over its clearly erroneous finding of fact, TRPA brazenly suggests that this court is without any power whatsoever to assess the agency's conclusory reliance on junk science. However, it's well-settled that deference accorded an agency's scientific or technical expertise is not unlimited.[52] "'Junk science' has no more place in administrative proceedings than in judicial ones."[53] Contrary to TRPA's assertion, the spirit of *Daubert* does apply to agencies acting under federal law.[54] This court may invoke the spirit of *Daubert* as a tool to assess whether there was a prejudicial abuse of discretion in the use of the soil profile for determining hydrology.

8. TRPA Prejudicially Abused Its Discretion By Approving Land Coverage In Excess Of Limitations

TRPA asserts the court should give deference to its coverage determinations. However, the court must not credit arbitrary and highly inaccurate calculations by TRPA and judicial deference is not warranted where the court is competent to decide the issue.[55] TRPA's calculations were derived by computer magic with no work shown.[56] Calculations were unsubstantiated and

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[50] The fact the subsequent reports cured the defect is only afforded by illegal rules in the ROP to post-*hoc* substantiate that, in this case, ground water was not affected.

[51] *Infra* note 61.

[52] *See, Brower v. Evans*, 257 F.3d 1058, 1067 (9th Cir. 2001); *Central Sierra Environmental Resource Center v. Stanislaus*, 304 F.Supp.3d 916, 928 (E.D. C.A. 2018).

[53] *Niam v. Ashcroft*, 354 F.3d 652, 660 (7th Cir. 2004) ("the spirit of *Daubert*…does apply to administrative proceedings…'Junk science' has no more place in administrative proceedings than in judicial ones").

[54] *Id. See also, Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 539 (7th Cir. 2005) (invoking the "spirit" of *Daubert* to reason that nothing in experts' curricula vitae indicated that they were unqualified); *Pasha v. Gonzales*, 433 F.3d 530, 535 (7th Cir. 2005) (concluding expert should not have been permitted to testify); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 469 (7th Cir. 2001) ("[a]n agency must act like an expert if it expects the judiciary to treat it as one"); *McElmurray v. U.S. Dep't of Agric.*, 535 F. Supp. 2d 1318, 1325 (S.D. Ga. 2008) ("[w]hile *Daubert* does not apply to agency decisions in any formal respect, the principles underlying that decision do apply" (citing *Pasha*, 433 F.3d at 535)).

[55] *National Parks Conservation Ass'n v. E.P.A.*, 788 F.3d 1134 (2015) (an agency must cogently explain why it has exercised its discretion in a given manner); *Western Watersheds Project v. Bureau of Land Management*, 971 F.Supp.2d 957 (E.D. C.A. 2013) (Environmental review procedures require agencies to ensure professional and scientific integrity, by setting forth the methodologies used and making explicit reference by footnote to the scientific and other sources relied upon for conclusions); *Natural Resources Defense Council v. U.S. EPA*, 31 F.4th 1203, 1207 (9th Cir. 2022) (on review of agency action, a court will not credit unsubstantiated or bare assumptions by an agency; A court does not credit arbitrary and highly inaccurate calculations by an

clearly erroneous; failure to make explicit methods used and numbers tabulated was a prejudicial abuse of discretion; the agency must show its work.[57]

TRPA's poor defense of its "cooked" coverage calculations during the Appeal hearing further erred through its entire dismissal of my own expert coverage engineering analysis without support of any "specific, cogent reasons."[58] The court must consider the record as a whole, weighing both the evidence that supports and the evidence that detracts from the agency's decision.[59] The court is unable to do this because, with no audio recordings in the AR, the agency did not provide any reasons for how it arrived at its conclusion aside from the SR and its erroneous information.

The Appeal decision on the excess coverage was not the outcome of a reasoned, logical thought process. I stand by MSJ 15:11-16:8. Summarizing: The AR shows the plans were approved in haste by a non-engineer. Electronic measurements were used, computer-mouse "clicks" with no other staff verifying the plan checker didn't make errors and no AR of how the results were obtained or checked. The planner couldn't understand my Exhibit 6 (AR1356) with my basic calculations shown, *e.g.*, width multiplied by height and a scale conversion. She misunderstood a basic fact, writing the foundation was not coverage, which was clearly erroneous. I'm a registered professional civil engineer with 25 years of plan-checking expertise. I showed all the scales and views measured, all the math steps to my results.[60] TRPA didn't resolve the plan discrepancies showing excess coverage. Though no Project plan with excess coverage is allowed by law, 11 of 12 BMs voted to deny the Appeal (*see* AR2870-AR2871). Staff was prejudged as right to support a foregone conclusion without evidence: uphold the Project. The illegal excess coverage decision was not a logical conclusion based on the facts such as a person of reasonable mind could accept, let alone 11 of 12 minds, with no AR evidence to the contrary. The decision was a prejudicial abuse of discretion and deserves no deference.

9. TRPA's General Stratagem for Prejudicial Abuse of Discretion Under the Illegal Rules It Devised; Repeat and Evade Review

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agency); *Monex Int'l, Ltd. v. Commodity Futures Trading Comm'n*, 83 F.3d 1130, 1133 (9th Cir. 1996) (judicial deference not warranted where courts are competent to decide the issue).

[56] *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959) (the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue) (quoted by *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970)).

[57] *Supra* notes 55 & 56.

[58] *See*, *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (agency credibility determinations may be overruled when they are "not supported by specific, cogent reasons").

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

[60] *C.f.*, F. R. Evid. Rule 201(b) (the court may judicially notice mechanics of basic math which is not subject to reasonable dispute because it generally known within the district court's territorial jurisdiction or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned).

Coverage and soils-hydrology evaluation error are examples of errors that are capable of repetition, yet evading review.[61] Here we see TRPA offering less than a scintilla of supporting evidence for coverage decisions in expectation of court deference. If someone lodges a costly appeal on a staff decision on a project coverage requirement, TRPA can attempt a post-decision remedy or bolster its case for the decision before the GB, right or wrong. If litigation follows, as here, TRPA stands on its judicial review requirements and, under its assertions, can often prevail in court—only to repeat the same behavior again and again.[62] In the case of coverage for this Project, TRPA offered little if any evidence for its decision, being unnecessary under the deference it generally enjoys. The Variance approval for the Project worked similarly, but with TRPA using post-decisional studies to bolster its improper decision to rely on the soil profile. These are dirty tricks TRPA uses to cover and repeat errors and pre-textual ruses, violate civil rights, and evade review under the abuses it exploits.

C. CONSEQUENCES OF AGENCY VIOLATIONS

1. Demonstration of Injury and Standing Through Zone of Interest Violations

Residents living under TRPA jurisdiction have an expectation and interest that TRPA will fulfill is duties under the Compact, follow its own regulations, and administer the Regional and local area plans which mutually protect all residents from adverse changes to the character and scenic nature of the area,[63] and violation of this social contract inherently causes injury. Residents who live and or own real property under TRPA jurisdiction have property or liberty interests in the preservation of the Tahoe Region. I am such a resident and therefore am injured by violations arising under the TRPA Compact which by their very nature "degrade or degenerate" the quality of the environment which surrounds me. Any complained injury falling within the zone of interests sought to be protected by the Compact is enough to establish injury.[64] Interests conferring standing to sue may reflect aesthetic, conservational, recreational, or spiritual values as well as economic values, where Compact is concerned, trend is toward enlargement of class of people who may protest administrative action.[65]

The bare fact that there are multiple routes to establish injury refutes TRPA mistaken premise that the only route is directly

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[61] *Federal Election Com'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 462 (2007) ("Capable of repetition, yet evading review" mootness exception applies where: (1) challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is reasonable expectation that same complaining party will be subject to same action again); *see also, Murphy v. Hunt*, 455 U.S. 478, 482 (1982); *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975); *Center For Biological Diversity v. Lohn*, 511 F.3d 960, 965 (9th Cir. 2007).

[62] Most appellants and litigants being unaware, as I am, that TRPA operates in chronic "bad faith."

[63] *Supra* note 47 at 517 (a zoning scheme is similar to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, under rationale that mutual restriction enhances total community welfare).

[64] *Supra* note 32 (to demonstrate standing…plaintiff must establish that injury complained of falls within zone of interests sought to be protected by statutory provision whose violation forms legal basis for complaint, not by reference to overall purposes of statute in question).

[65] *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153-154 (1970); *see also, City of Sausalito v. O'Neill*, 386 F.3d 1186 (9th Cir. 2004) (A cognizable procedural injury exists, as would give rise to Article III standing, when a plaintiff alleges that a proper environmental review has not been prepared under NEPA when the plaintiff also alleges a "concrete" interest, such as an aesthetic or recreational interest, that is threatened by the proposed action).

(OSJ 16:8, OSJ 17:3-5 & OSJ 17:23).

I've unequivocally alleged that proper environmental review has not been done under the Compact. This Project injures the quality of the environment sought to be protected by, *inter alia*, the Compact, the Endangered Species Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Clean Water Act.[66] More specific and concretely, the Project causes judicially cognizable injury because: (1) it disfigures the views of the Heavenly mountains, surrounding forest, and Bijou Park Creek aspen grove which injures my aesthetic enjoyment of the Lakeview Heights Plan Area and impairs its enjoyment for future generations;[67] (2) peer-reviewed scientific literature submitted under the Project's environmental review process, demonstrates the tower design injures local populations of endangered, threatened, or sensitive wildlife and I have a passionate "[d]esire to use or observe animal species, even for purely aesthetic purposes";[68] (3) it discharges microplastic solid waste into the environment and into Bijou Park Creek and downstream waterways;[69] (4) exceedance of allowable coverage limits contributes to human-caused sediment which lowers the aesthetic clarity of Lake Tahoe; (5) environmental harm is a type of evil which violates my spiritual values through the desecration of the region's sacred splendor—its value as a natural holy temple to worship god while witnessing his awesome powers—disconnects me from divinity[70]; (6) whereas the economic vitality of the Lake Tahoe Region is innately dependant on its outstanding environmental quality and aesthetics, degradation causes me economic harm; and (7) I am a member of the Tahoe for Safer Tech, an unincorporated environmental association

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[66] Compact's judicial review provision is appropriate mechanism to review TRPA specific actions which proceed in violation of federal laws such as ESA, MBTA, & CWA (*cf.*, *Center for Biological Diversity v. Bernhardt*, 982 F.3d 723, 733 (9th Cir. 2020) (when two claims are inextricably intertwined between two statutes, and those statutes contain conflicting jurisdictional provisions, courts follow the more specific statute; NEPA, ESA, and the Marine Mammal Protection Act all lack independent judicial review provisions; claims arising under all three are therefore reviewable under the APA); *Bennett v. Spear*, 520 U.S. 154, 175 (1997) ("The APA, by its terms, provides a right to judicial review of all 'final agency action for which there is no other adequate remedy in a court'"). APA has analog provision in Compact which is controlling as a more specific federal law (*see*, *City of South Lake Tahoe v. Tahoe Regional Planning Agency*, 664 F.Supp. 1375, 1377 (E.D. CA. 1987)).

[67] *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972) (where "development 'would destroy or otherwise adversely affect the scenery, natural and historic objects and wildlife of the park and would impair the enjoyment of the park for future generations.' We do not question that this type of harm may amount to an 'injury in fact' sufficient to lay the basis for standing….Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process"); *Conservation Congress v. United States Forest Service*, 409 F.Supp.3d 861 (E.D. C.A. 2019) (A plaintiff satisfies the "injury in fact" to possess Article III standing in an environmental case where an individual shows an aesthetic or recreational interest in a particular place, or animal, or plant species and that interest is impaired by a defendant's conduct); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562-563 (1992) ("desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing"); *Lujan v. National Wildlife Federation*, 497 U.S. 871, 872 (1990) ("'recreational use and aesthetic enjoyment' are among the sorts of interests that [NEPA is] designed to protect").

[68] *Id.* (desire to use or observe animal species, even for purely aesthetic purposes, is a cognizable interest for standing purposes).

[69] *California Sportfishing Protection Alliance v. Chico Scrap Metal Inc.*, 124 F.Supp.3d 1007 (E.D. C.A. 2015) (A facility's discharges are subject to the Clean Water Act (CWA) if bodies of water are conduits for the discharges to seep into a navigable waterway and the discharges significantly affect the physical, biological, and chemical integrity of the navigable waterways; that water containing pollutants discharged from facility flowed into ditch, then into seasonal intermittent stream which flowed miles before discharging in ravine that was tributary of navigable waterway miles from facility, was sufficient to support environmental claim, under CWA, that facility discharged pollutants into navigable waterway).

[70] *Supra* note 65 (interest conferring standing to sue may reflect spiritual values).

which has members who own real property adjacent or near to the Project and are thus directly threatened by it.[71] I've appended Exhibit 6, my affidavit declaring concrete and particularized injury falling within the Compact's zone of interests .[72]

2. Demonstration Of Injury And Standing From Due Process Violations

A fortiori, laws and regulations promulgated under the Compact themselves create interests protected by the Fourteenth Amendment that refute TRPA at OSJ 14:16-24 and OSJ 15:14-15. A liberty interest protected by the Due Process Clause may arise from an expectation or interest created by statutes or policies, or it may arise from the Constitution itself, by reason of guarantees implicit in the word "liberty."[73] After all, the Due Process Clause of the Fourteenth Amendment was intended to prevent government from abusing its power, or employing it as instrument of oppression.[74] Whenever TRPA promulgates legislative rules[75] which carry the force of federal law, the public may presume that the law will be obeyed.[76] TRPA may not violate its own regulations.[77] There is a liberty interest which is deprived whenever the TRPA violates its own ROP. TRPA resorts to sophistry[78] to mislead this court that an agency may violate its legislative rules—without causing to a due process violation—by citing federal caselaw[79] which actually pertains to internal interpretive guidelines which do not carry the force of law.[80] It's simply untrue that TRPA may violate its unambiguous regulatory ROP without causing a due process violation.

Whether a TRPA pronouncement is interpretive or substantive is a legal question[81] so court gives no agency deference. TRPA's COO are substantive regulations. Notwithstanding, any so-called TRPA "standard practice" which is inconsistent with or amends an existing legislative rule, cannot be interpretive, since it would impose new rights or obligations by changing an existing law and such amendment must follow the applicable notice and public comment procedure requirements.[82]

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[71] *E.g.*, Tahoe For Safer Tech co-founder Benjamin Lebovitz, a co-appellant who personally testified at the Appeal Hearing, lives within a block of the Project. He would be directly harmed via one or more of the aforementioned judicially cognizable mechanisms of injury. Environmental group's website *available at* https://www.tahoeforsafertech.org.

[72] This supplements SOA and AR materials in accordance with the manner and degree of evidence required at successive stages of litigation.

[73] *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

[74] *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115 (1992).

[75] A "legislative rule" is issued by an agency pursuant to statutory authority and has the force and effect of law; An "interpretive rule" simply advises the public of the agency's construction of the statutes and rules which it administers and lacks the force and effect of law (*PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 588 U.S. ----, 139 S.Ct. 2051, 2055 (2019); *see also*, *Azar v. Allina Health Services*, 587 U.S. ----, 139 S.Ct. 1804, 1811 (2019); *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96-97 (2015); *Lane v. Salazar*, 911 F.3d 942, 949 (9th Cir. 2018); *Mora-Meraz v. Thomas*, 601 F.3d 933, 939-940 (9th Cir. 2010); *Miller v. California Speedway Corp.*, 536 F.3d 1020, 1033 (9th Cir. 2008).

[76] California Civil Code § 3548 (a "Maxim of Jurisprudence" is presumption that "[t]he law has been obeyed"); *see e.g.*, *People v. Golston*, 58 Cal.2d 535 (1962) (in absence of showing to contrary it will be presumed that constitutional due process provision was obeyed).

[77] *Supra* note 12.

[78] We are way beyond the point that sophisticated counsel should have known better. We are probably at the point of intentional and blatant disregard for controlling authority and case law.

[79] *James v. U.S. Parole Com'n*, 159 F.3d 1200, 1206 (9th Cir. 1998) (holding that alleged failure to fully comply with internal guideline did not amount to due process violation, as provision was internal interpretive provision that did not have force of law).

[80] Defendant TRPA Combined Opposition and Cross-Motion, p.14, l.16; p.15, l.4; p.17, l.3.

[81] *Mora-Meraz v. Thomas*, 601 F.3d 933, 939-940 (9th Cir. 2010).

[82] Agencies are generally required to provide the public with adequate notice of a proposed rule followed by a meaningful opportunity to comment on the

3. Concepts Of Property And Liberty Related To Violations Of Due Process And Equal Protection Rights

The concepts of equal protection of the laws and due process both stem from the American ideal of fairness, and are not mutually exclusive, nor are the concepts always interchangeable, in that equal protection of the laws is a more explicit safeguard of prohibited unfairness than due process of law, but a discrimination may nevertheless be so unjustifiable as to be violative of due process.[83] The term "liberty" within the Fifth Amendment to the Federal Constitution extends to the full range of conduct which the individual is free to pursue and it cannot be restricted except for a proper governmental objective.[84] There is a due process right to notice and meaningful opportunity to be heard by an unbiased tribunal.[86] The ED's impediments to hearing access subvert due process. The ED acts as gatekeeper when she obstructs petition processes for appeal to the GB in the first instance, and biases any granted appeal hearing when she rushes scheduling in violation of ROP regulations, as here. The lack of public notice diminishes the likelihood that any aggrieved persons will appeal for redress, will testify at hearing, and further deprives them of opportunity for public participation in environmental review process, and their right to be heard.

III. JUDICIAL REVIEW STANDARDS IN THIS CASE

A. Overview of Applicable Law

TRPA is an agency created by Congress under the Compact Clause of the U.S. Constitution,[87] operates "under aegis of federal law,"[88] and is empowered to adopt regulations which carry the force of federal law.[89] TRPA Compact is substantially consistent with that creating an independent quasi-federal agency whereas it is an agent of Congress established to carry into effect the legislative polices embodied in the "Compact."[90] Its organic act is a more than supple device for dealing with interests confined within region, but is also means of safeguarding national interest[91]—such as to protect Tahoe Region as "National

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rule's content (*e.g.*, 5 U.S.C. § 553(b)-(c); Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (October 4, 1993) (providing for presidential review of agency rulemaking states that the public's opportunity to comment, "in most cases should include a comment period of not less than 60 days"). *See also*, Charles H. Koch Jr., 1 ADMINISTRATIVE LAW AND PRACTICE 329-30 (2010 ed.).

[83] *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

[84] *Id.*

[86] *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (due process requires notice reasonably calculated to apprise interested parties of pendency of action and afford them an opportunity to present their objections and be heard at a meaningful time in a meaningful manner); *Goldberg v. Kelly*, 397 U.S. 254, 267, 271 (1970) (due process of law is opportunity to be heard during hearing at meaningful time and in meaningful manner by an impartial decision maker); *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959) (rights of confrontation and cross-examination apply in all types of cases where administrative and regulatory actions are under scrutiny); *Ward v. Village of Monroeville*, 409 U.S. 57, 62-63 (1972) (due process requires "a neutral and detached judge in the first instance"). *See also, Arnett v. Kennedy*, 416 U.S. 134, 197 (1974); *Mathews v. Eldridge*, 424 U.S. 319, 325 n.4 (1976).

[87] *See, U.S. v. Morrison*, 529 U.S. 598, 607 (2000) (enacted statutes must be based on powers in Constitution).

[88] *Jacobson v. Tahoe Regional Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977).

[89] *See, Lake Tahoe Watercraft Recreation Ass'n v. TRPA*, 24 F.Supp.2d 1062, 1068 (ED. CA. 1998); *City of South Lake Tahoe v. Tahoe Regional Planning Agency*, 664 F.Supp. 1375, 1377 (E.D. CA. 1987); *Stephans v. Tahoe Regional Planning Agency*, 697 F.Supp. 1149, 1152 (D. Nev. 1988).

[90] *Cf., F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 540 (2009).

[91] *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 40 (1994) (compacts are means of safeguarding national interest); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 27 (1951).

Treasure."[92] The TRPA Compact is construed as a contract under the principles of contract law.[93] State sovereign power governs all contracts subject to sovereign's jurisdiction, and will remain intact unless surrendered in unmistakable terms;[94] a State does not easily cede its sovereignty.[95]

Land management interstate compacts are the constitutional cousin of the federal enclave and there is substantial overlap; states simply opt into ceding regional jurisdiction under express terms invoked through the Compact Clause inversely to the manner in which they opt out of aggregate cession under the Federal Enclave Clause.[96] Thus, TRPA preempts traditional state powers only where that result is the clear and manifest purpose of Congress.[97] Applying the "unmistakability doctrine" to the TRPA Compact means that—unlike federal agencies or enclaves administered under U.S. Const. Article II Sec. II—ambiguous, "mistakable," statutory terms are not entitled to traditional agency deference.[98] Nor is TRPA's interpretation of the Compact's judicial review provisions[99]—of which itself is not charged with administering[100]—entitled to agency deference. Notwithstanding, once the TRPA Compact received approval of Congress, it was transformed into a law of the United States, preempting any state law that conflicts with the Compact.[101]

California did not in "unmistakable terms" surrender residents' expansive rights secured under its State Constitution. California's due process protections are, at times, broader than those imposed by the Fourteenth Amendment.[102] California

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[92] Compact Art. I.

[93] *See, New York v. New Jersey*, 598 U.S. 218, 143 S.Ct. 918, 924 (2023) (interstate compacts are construed as contracts under the principles of contract law).

[94] *U.S. v. Winstar Corp.*, 518 U.S. 839, 871-872 (1996) (under unmistakability doctrine, sovereign power governs all contracts subject to sovereign's jurisdiction, and will remain intact unless surrendered in unmistakable terms); *see also*, *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (in federal courts, except in matters governed by Federal Constitution or by acts of Congress, law to be applied in any case is law of the state).

[95] *Supra* note 93 at 925 (background notion that a State does not easily cede its sovereignty may inform the interpretation of TRPA compact).

[96] *See, Kleppe v. New Mexico*, 426 U.S. 529, 542-543 (1976); *Paul v. U.S.*, 371 U.S. 245, 268 (1963); *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 528 (1938); *Swords to Plowshares v. Kemp*, 423 F.Supp.2d 1031, 1034 (9th Cir. 2005) (all generally holding jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification).

[97] *Department of Revenue of Oregon v. ACF Industries, Inc.*, 510 U.S. 332, 345 (1994) (Supreme Court will interpret statute to preempt traditional state powers only if that result is clear and manifest purpose of Congress); *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537, 544 (1994) (it is generally presumed that Congress acts intentionally…particularly where [it replaces] standard legal terminology with neologism; before federal statute will be construed to displace traditional state regulation in manner which radically readjusts balance of state and national authority, such a federal statutory purpose must be clear and manifest).

[98] Compare *Alabama v. North Carolina*, 560 U.S. 330, 344 (2010) (unless the text of an interstate compact directs otherwise, the Supreme Court does not review the actions of a compact commission on the deferential model of judicial review of administrative action by a federal agency) with, *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945) and *Auer v. Robbins*, 519 U.S. 452 (1997).

[99] Compact. Art. VI(j).

[100] *See, Hecht Co. v. Bowles*, 321 U.S. 321, 330 (1944) (in construing statute setting up administrative agency and providing for judicial review of its action, court and agency are not to be regarded as wholly independent and unrelated instrumentalities, each acting in performance of prescribed statutory duty without regard to appropriate function of other in securing plainly indicated objects of statute); *see also*, *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 138 n.9 (1997) (we do not defer to the Director's interpretation here of the APA's provision for allocating the burden of persuasion under the preponderance of the evidence standard, [because] [t]he APA is not a statute that the Director is charged with administering).

[101] *See, Tarrant Regional Water Dist. v. Herrmann*, 569 U.S. 614, 627 n.8, 628 (2013) (citing *Virginia v. Maryland*, 540 U.S. 56, 66 (2003) (quoting *Cuyler v. Adams*, 449 U. S. 433, 438 (1981))); *Com. of Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518, 566 (1851) (bi-state compact, by the sanction of Congress, has become a law of the Union).

[102] *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1050 (9th Cir. 2014); *Today's Fresh Start, Inc. v. L.A. Cnty. Office of Educ.*, 57 Cal.4th

procedural due process protections require reasonable notice and an opportunity to be heard before a lead agency makes an adjudicatory land use decision that constitutes a substantial or significant deprivation of other landowners' property rights.[103]

The zoning authority of local governments derives not from statutes such as the Compact, but from the state Constitution.[107] A conditional use permit grants an owner permission to devote a parcel to a use that the applicable zoning ordinance allows not as a matter of right, but only upon issuance of the permit.[108] A variance is a permit to build a structure or engage in an activity that would not otherwise be allowed under the zoning ordinance; it cannot, however, be granted to allow a use unauthorized by the zoning ordinance.[109] To quote the California Supreme Court[110]:

> "[T]he adoption of zoning regulations is a legislative function, the granting of variances is a quasi-judicial, administrative one. If the judiciary were to review grants of variances superficially, administrative boards could subvert this intended decision-making structure…courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare"
> (*Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506 (1974)).

TRPA administrative action may not issue variances outrageously or systemically which carry the effect of changing or rezoning regional or local area plan.[111] The ED has effectively usurped a legislative function and subverted the intended decision-making structure, by approving excavation depths in exceedance of five feet which do not meet the criteria of TRPA regulations or long-term plans. Through the Governing Board's planning laws, the local community had been assured community welfare which prevented the adverse development of gargantuan facilities[112] on neighboring properties which require significant foundations and whose foundations may leach unfairly leach lime and other chemicals into the surrounding water table.

B. Applicability of Standards

This case involves mixed questions of law and fact[113] whereas the content within the AR is undisputed and ultimate

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197, 212-213 (2013).

[103] *Id.*

[107] *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal.App.4th 997 (2007).

[108] *Id.*

[109] *Id.*

[110] *See, West v. American Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940) (the highest court of state is the final arbiter of what is state "law", and its pronouncement is to be accepted by federal courts as defining state law).

[111] *Supra* note 45; *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990) (general plan functions as "a 'constitution,' or perhaps more accurately a charter for future development").

[112] This Macro-Cell Tower is 112 feet tall—approximately 12 stories—in a residential neighborhood with a two-story height limit.

[113] *See, Google LLC v. Oracle Am., Inc.*, 593 U.S. ----, 141 S. Ct. 1183, 1199 (2021) (a reviewing court should break a mixed question of law and fact into "its separate factual and legal parts, reviewing each according to the appropriate legal standard); *United States v. McConney*, 728 F.2d 1195 (9th Cir. 1984) (proposing an inquiry to determine whether *de novo* or clearly erroneous review is appropriate).

Compact and the rest of federal environmental law whereas National Environmental Policy Act ("NEPA") decisions which are authoritative[125] and are often evaluated under the arbitrary and capricious standard.[126] The "rational basis review" or "hard look review," typically applied under NEPA are just kinds of substantial evidence review. The administrative review clause of the Compact should be read under the strong presumption that Congress intended judicial review.[127]

C. Deference To TRPA Is Often Unwarranted

Contrary to TRPA's assertions, court deference to purported agency expertise is not unlimited.[128] No deference is warranted to TRPA's interpretation of its unambiguous regulations, decisions which rest on misinterpretation of Court precedent, TRPA violation of statutes, or otherwise where TRPA had no authority to act. Nor is deference warranted where TRPA is merely advancing a litigation position that is not an official interpretation of its regulation, where it has radically inconsistent interpretations of law, or where courts have experience in the area and are fully competent to decide the issue.

IV. CONCLUSION

The Administrative Record has exposed but one instance of a severe and pervasive problem where democratic processes and environmental review under TRPA are closed and malfunctioning, controlled by special development interests. TRPA wants this court to make precedent that it is accountable to nobody, no matter the harms. Don't let it. I seek relief on behalf of myself and others and move for the court to uphold the MSJ and MSAR and its claims for relief and liability damages as also supported herein. I urge the court to order the tower be dismantled, put a moratorium on new towers sans an EIS and appoint a special master over TRPA if possible to ensure regulatory reform is legally proper and limits future abuses of discretion.

Alan Miller DATED: October 20, 2023

Alan Miller, *Plaintiff, in propria persona*

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

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encompasses the agency's assessment of the evidence in the record and its application of that evidence in reaching a decision. In arbitrary and capricious review, the focus is on the agency's explanation or justification of its decision and whether that decision can be reasoned from the body of evidence).

[125] *Sierra Club v. Tahoe Regional Planning Agency*, 840 F.3d 1106, 1115 (2016). *See also,* Plaintiff's Reply And Opposition To Defendant TRPA's Opposition To Plaintiff's Motion To Supplement The Administrative Record p.6.

[126] *See*, *Barnes v. Fed. Aviation Admin.*, 865 F.3d 1266, 1269 (9th Cir. 2017); *Ka Makani 'O Kohala Ohana Inc. v. Water Supply*, 295 F.3d 955, 959 n.3 (9th Cir. 2002) (clarifying when standard applies). *See also*, *ForestKeeper v. La Price*, 270 F.Supp.3d 1182 (2017) (with respect to judicial review of agency decisions made pursuant to NEPA, summary judgment is governed by the arbitrary and capricious standard instead of the typical summary judgment standard that determines whether there are disputed issues of material fact); *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1205–06 (9th Cir. 2004).

[127] *Block v. Community Nutrition Institute*, 467 U.S. 340, 351 (1984); *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 674 (1986); *De Martinez v. Lamagno*, 515 U.S. 417, 419 (1995).

[128] *Supra* note 52.

EXHIBIT 6

Affidavit of Injury Falling within Compact's Zone of Interests

Affidavit

My name is Alan Miller and I have resided in the City of South Lake Tahoe since 1993. I came here because of my love for the natural environment, the near-pristine waters, the magnificent trees and forests, the mountains and their waterfalls and trees. I connect with nature through walks and hikes, bicycling, swimming in the natural waters, breathing the clean air and enjoying the night skies. My world is a world that is alive: not only the plants and animals, from whom I receive "messages" helpful to me in my daily life but the mineral kingdom, the sacred "four winds" and the nature spirits assisting the mother earth, the mother of us all. I know many people can't understand the unseen, certainly not the desecraters and despoilers, how powerful it is, and how everything is connected to the sacred benevolence.

When I came to this basin there were no wireless facilities save for around the airport and a small number of community radio station antennas. Now the wireless towers are ubiquitous and increasing everywhere in the region, like an urban blight, and the 112-foot monopine macrotower Verizon Wireless installed at 1360 Ski Run in my city is just one egregious and disgusting example of how my environment is being degraded one tower at a time, with none escaping the poison.

There is a business I frequent on Ski Run Boulevard so I am frequently in the area and visiting friends in the neighborhood. The Bijou Park Creek is very unique, with its dense aspen groves, so colorful in the fall (and in the spring when the leaf-buds open). My late wife, poisoned by wireless, loved aspens for the way they sound in the wind. Me, too. I saw a bear there this summer and I've seen eagles over the Ski Run tower site, which stands adjacent. I question whether the aspens and all they support will be there for future generations, knowing towers are especially hard on aspen trees. It is depressing to consider they wouldn't be.

The tower is on my route to and from the Heavenly Ski area, where I've spent many happy days over the years connecting with god and the nature I enjoy. I no longer patronize the ski area, so disgusted am I with its own wireless expansion for commercial profit on the public lands, with ski area employees in cahoots with the Tahoe Regional Planning Agency, which is a horrible thing for the environment, the plants, the animals, the people and the waters. I can't connect spiritually with my god and nature in the same way there now; something intangible has been lost. Besides that, I quit going because every time I pass the Ski Run tower, with its in-your-face destruction of the mountain view, I am reminded of the unfettered wireless expansion at Lake Tahoe by the tower on my route, the toxic microplastic wastes being continually shed to the environment as I have witnessed at the Ski Run tower and other monopine macrotowers. and how my friend Monica and her family were driven to flee their beautiful home overlooking Lake Tahoe to preserve their health from continual microwave radiation after the tower was approved on the adjacent property by the feckless TRPA. I am concerned how the Ski Run tower and the tower across the street from where he lives will affect the health of my friend David, who suffers grave illness exacerbated by microwave poisoning. I am concerned that all this wireless expansion will keep . . . expanding until, with no planning or environmental review whatsoever, the environment at Lake Tahoe right to my front door has been further radically altered by powerful unseen forces that are malevolent.

The fact is the Ski Run tower could not have been built if TRPA and others had followed the laws. I feel like I live in a banana republic under TRPA and I DO NOT CONSENT. The environment I love is being destroyed by wireless microwaves with impunity by the very agency charged to protect the environment. TRPA is not the Tahoe Regional *Protection* Agency, it is more the Tahoe Regional *Political* Agency, and it distresses me greatly to see how money talks and BS walks at TRPA. It's disgusting, reprehensible, and I have no faith in TRPA to protect the waters or environment of Lake Tahoe.

The money-changers and thieves are in the temple, with TRPA presiding over the development party as the corrupt high priests of a half-baked regulatory scientism, seemingly beyond the reach of the law. I believed in the Compact, as its purpose was to prevent damaging land development—such as this ill-placed 112-foot wireless antenna tower—and to protect Tahoe's special and scenic areas through stringent planning standards and rigorous environmental review. I believed Tahoe's environmental laws protected the environment by requiring public input during the environmental review process of projects—that the gathering of local knowledge, wisdom, and observations would result in better informed and higher quality environmental decisions. Now I feel betrayed and harmed by TRPA's degradation of the environment; harm which will last for generations. For all this I grieve.

Under penalty of perjury, I attest these facts to be true and correct, without intent to deceive.

Alan Miller _____ Dated: October 19, 2023

Alan Miller,

PO Box 7526, South Lake Tahoe CA 96158

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Plaintiff, in *propria persona*

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OCT 20 2023
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EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALAN MILLER,

Plaintiff,

v.

TAHOE REGIONAL PLANNING AGENCY,

Defendant.

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

MOTION FOR ADMINISTRATIVE RELIEF TO EXCEED PAGE LIMITS

Summary of Motion

Out of an abundance of caution not to violate Judge Claire's Standing Orders, Plaintiff files this Motion to Exceed Page Limits (hereinafter "Motion") to submit a 20 page "Reply and Opposition." The reasons for this motion are because: (1) there is genuine ambiguity as to whether a 20 page or ten page limit applies to my "Reply and Opposition"; and (2) the complexity of this administrative review case ordinarily commands at least a 20 page opposition in the interest of justice. I was granted two extra pages by Judge Claire's order in response to the Stipulation And Order To Extend Summary Judgment Deadlines (ECF 34) then presuming the ten page requirement applied, and in the final analysis find it may not apply and that the motion can't be rightfully accomplished in under 20 pages.

Ambiguity Compels Motion

Application of Judge Claire's Standing Orders for Civil Cases (hereinafter "Standing Orders") to the local and federal rules raised ambiguity in my instant case. The Local Rules use different words to describe pleadings than Fed. R. Civ. P. 7. In any case, Local Rule 261(d) — "Procedure In Actions For Review On An Administrative Record In Non-Social Security Cases," promulgates:

> "In actions, other than Social Security actions, which require the Court to review an administrative record, the following deadlines shall apply unless otherwise ordered…**Reply and Opposition**. Within 15 days after the filing of the defendant's opposition and cross-motion, the plaintiff may file a reply and any opposition to the defendant's cross-motion"

The Local Rules expressly state that the plaintiff may file "any opposition to the defendant's cross-motion," and imply such motion be titled Plaintiff's "Reply and Opposition." Pursuant to the "Standing Orders":

> "**PAGE LIMITS**: Initial moving papers in non-discovery matters, and oppositions to such motions, are limited to 20 pages. Replies are limited to 10 pages. Page limits do not include the index or table of contents, table of cases, or exhibits (if any). Documents exceeding these limits without advance leave of court, for good cause shown, will be stricken without further notice."

The "Standing Orders" expressly state that "oppositions" are "limited to 20 pages" and that "[r]eplies are limited to 10 pages." A motion under Local Rule 261(d) is described as a "Reply and Opposition" making it plausibly susceptible to both page limit rules. It is a general maxim of jurisprudence that "[t]he greater should include the less" (*e.g.*, California Civil Code § 3536). Therefore when the motion contains both an opposition entitling it to 20 pages and a reply entitling it to ten pages, the applicable limit is 20 pages. It is only fair for a Plaintiff to be able to adequately oppose a defendant's 20 page cross-motion potentially involving substantially different allegations with a 20 page opposition. After all, the Defendant also gets the last say with a ten page reply.

Complexity of Case

This case involves a 3,429 page administrative record and complex and arcane legal principles pertaining to Inter-state Compacts under the U.S. Constitution, administrative law, diversity jurisdiction, standards of review, and an extremely large body of agency regulations. It is in large part the complexity of these regulations that has obscured the astonishing facts and matters of law revealed in my Reply and Opposition, which enlarge the dimensions of the case, requiring at least 20 pages to brief adequately. It is far better and more efficient to allow the case to resolve justly at the District Court than on appeal. Based on limited research of other court practices and rules an allowance of 20 or more pages is not unusual for such a reply, especially considering the case complexities.[1]

I am not seeking license to be wordy. I am a *pro se* Plaintiff and respectfully make this motion to accompany my Reply and Opposition asking for the court to advance its discretion on page limits so that nationally important matters of law and justice are served for the protection of the civil rights of the people and for the protection of Lake Tahoe, a national and global resource.

DATED: October 20, 2023

Alan Miller

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Plaintiff, in propria persona

[1] *E.g.*, D. Nev. LCR 47-2 ("motions, and responses to motions are limited to 30 pages"); S.D. CA. LCR 7.1(h) ("Briefs or memoranda in support of or in opposition to all motions noticed for the same motion day must not exceed a total of twenty-five (25) pages in length"); N. Dist. CA. LCR. (generally promulgating that a brief or memorandum may not exceed 25 pages of text).

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EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALAN MILLER,

Plaintiff,

v.

TAHOE REGIONAL PLANNING AGENCY,

Defendant.

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

OBJECTIONS TO MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS

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Statutes

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

Public Health and Welfare Act, 42 U.S.C. § 1985

State Laws

California Constitution Art. I

Cases

Federal

- U.S. Supreme Court

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

Henderson v. Mayor of the City of New York, 92 U.S. 259, 263 (1875)

- Federal Courts of appeals

Hawaii Stevedores, Inc. v. Ogawa, 608 F.3d 642, 652 (9th Cir. 2010)

Int'l Union of Painter & Allied Trades, Dist. 15, Local 159 v. J & R Flooring, Inc., 656 F.3d 860, 865 (9th Cir. 2011)

Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001)

People ex rel. Lacey v. Robles, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2d Dist. 2020)

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

Other Authorities and References:

Nature (Nava, V., Chandra, S., Aherne, J. et al. Plastic debris in lakes and reservoirs. (*Nature* 619, 317–322 (2023). https://doi.org/10.1038/s41586-023-06168-4)

For the reasons set forth below, plaintiff objects to magistrate judge's findings and recommendations (ECF 38, hereinafter "OFR" or "order") and further pleads that his motion for summary judgment (ECF 28, "MSJ") be GRANTED, defendant's cross-motion (ECF 35, "CMSJ") be DENIED, and that judgment be entered for plaintiff and the case be closed. Presentation follows order's outline. Plaintiff further adopts by reference all his past pleading, motions, and exhibits. (Fed. R. Civ. P. 10(c)) This motion is filed timely after plaintiff contacted the Office of the Clerk, learning the court would be closed on Friday, November 24, 2023 for a Thanksgiving "day-after" holiday at the discretion of the Chief Judge of the District, though the closure 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))

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

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

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

Plaintiff further objects to MJ's myopic focus on defendant's culled *de minimis* evidence as "substantial" contrary to the 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' 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

Congress could not do directly, defendant can not do indirectly through its regulations and its regulatory delegations of authority (*Henderson v. Mayor of the City of New York*) 92 U.S. 259, 263 (1875)), which do precisely the above, are unconstitutional and must be abolished as a matter of law. (ECF 32, hereinafter "Reply," 1:8-16) These regulatory laws were used to deprive plaintiff 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, 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 simply put all variance and permit proposals before the public at a Governing Board meeting for approval and restore the public's civil rights, as a first step. (TRPA permits expire by law three years after adoption. (Art(VI)(p)) Only permits issued in the last three years or pending legal final action are legally affected.)

OFR 1:21 cites to "Federal Rule of Civil Procedure 65" which is a reference to Injunctions and Restraining Orders. Since this order is neither, this reference appears to be an error, possibly a clerical error, as plaintiff is not aware of why § 65 would apply in this case, and the order does not reference either an injunction or restraining order or include required elements for either 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 being enjoined or restrained under the section in some way that is opaque, in which case plaintiff objects.

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

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

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

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

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

OFR 3:19-20 cites that any development project must meet "applicable" regulations established by the agency. That being 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 under illegal regulations, were in any way proper or in compliance as stated. That is frankly impossible with public input systematically deprived and suppressed as it has been illegally for decades. Nonetheless, the order erroneously states, "The Executive Director (ED) has authority to modify project approvals. See ROP 5.15." (OFR 3:23-24) The ED has no such authority under the Compact; approval of projects and modifications is solely prescribed to the Governing Board by vote at a 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 project to be approved by the Governing Board members (BMs) to be later modified out of the public eye by the ED, who simply can not be empowered with this assumed, delegated authority—as directed by Congress. The court has simply looked past all this illegality, erroneously and without comment as a manifest constitutional error of law. Presuming the court has the 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 is fundamental is a gross miscarriage of justice.

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 applications considered by a Hearings Officer, and some heard by the Governing Board, depending on the project at issue. See Code § 2.2.2." Here the court is finding the whole illegal regulatory scheme plaintiff uncovered and discussed in the Reply is legally proper, without comment, merely reciting from defendant's CMSJ. It is not proper and this is a gross error of law which court fails to address in any way.

Plaintiff's Reply shows the AR contains no evidence of legal compliance with public noticing requirements (Reply 8:15-20), for this project or any other in years, yet the order states, "The Board meets once per month at a noticed public meeting," citing Art(III)(d). (OFR 4:10-11) If court thinks the public noticing deficiencies of the defendant plaintiff discussed as a violation 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

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

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

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

III. Legal Standard

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

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

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

IV. Administrative History

1. The Initiation of the Cell Tower Project

Court, like defendant, notes plaintiff didn't appeal the Project approval (in 2021). (OFR 7:20-23) That this is "inaccurate 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 addressed with any specificity by court in the order.

2. The Plan Revision (Variance)

The "Revised: Soil Project Approval Waiver" cited (OFR 8:2-3) constitutes a Variance from the TRPA Code of Ordinances (COO), as discussed in the Reply. (7:15-8:14) Defendant's issuance of the revised permit (OFR 8:12-13) was 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 appeal. The court errs as a matter of fact in stating, "On August 22, 2022, plaintiff appealed the Plan Revision . . ." There is no legal evidence for that in the AR, as alleged in the Reply, and nowhere rebutted.

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

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

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

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-*hoc* rationalizations for examinations required prior to approval and not performed, with TRPA staff incompetent to administer its regulations pre-approval, and without expertise the agency needs and does not possess, as discussed in plaintiff's Reply at 10:13-18. It is only defendant's illegal regulations that give it opportunity to err and escape review for its faulty acceptance of ground water investigations by unqualified professionals, as adjudged by unqualified professionals on the TRPA staff.

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

5. Lawsuit Procedural Background

Court notes at OFR 9:19, the action was begun on November 23, 2022. The day after defendant's final reply was due and didn't come, MJ issued her recommendation, which must be some kind of record in terms of work turnaround, making my opposition reply due Thanksgiving Day. The MJ's work is at least poetic justice culminating my "Thanksgiving lawsuit" input after a year. Besides that, Plaintiff must again object to the sentence ending with, ". . . voted to deny plaintiff's appeal" as an error 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 Plan Revision, which involves a different part of the Compact law, despite my admonitions in pre-hearing comments (AR2867) 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)

V. Motion to Supplement the Record

While plaintiff suggested that the Administrative Procedures Act or APA (5 U.S.C.) provides controlling case law 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, "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. § 702.'" This is not "an APA case" but rather a case involving judicial review under the Compact, as noted previously by the order. Unless court is reasonably conceding plaintiff's assertions (without comment) there could be an error with the judicial review standards being applied and court should clarify this matter. Nonetheless, the whole record is implicated by the Compact review standards.

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

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

Here we have court's conclusion (OFR 11:16-20), reciting defendant's CMSJ, and then agreeing with defendant's statement, that matters in the MSAR "are outside of the scope of the court's review in this case and that plaintiff has not identified any bad-faith agency actions to warrant record supplementation. ECF No. 31 at 4-9. The undersigned [MJ] agrees with defendant that the record does not require supplementation is this case. " In this manner, the court is thereby dismissing any findings under *Lands Council v. Powell* (OFR 12:6). Court is silently condoning and supporting illegal acts by defendant with a faulty analysis, if any, of the evidence or facts in the AR, in complete and unwarranted deference to defendant, as is discussed herein and in plaintiff's prior motions. Bad faith action began with the very first written communiqué from defendant to plaintiff, the stay response, which tainted everything that followed with illegally scheduling an appeal hearing in the absence of a 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 error based on plaintiff's prior motions and what follows.

A. Oath of Office Concern Does Not Demonstrate Bad Faith

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

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

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 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 v. Robles*, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2d Dist. 2020). Oath failures are currently widespread at all levels of government, including courts. TRPA is a case in point.

Court states the Compact does not contain an oath of office requirement (OFR 12:1-5) but that is irrelevant. As for most 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. 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 faith. The failure to subscribe to a required oath can only be considered potentially treasonous, "bad faith" in the extreme.

B. The Administrative Record Already Contains Public Comments

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

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

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

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

VI. Summary Judgment Analysis

A. Claim 1: "August 5, 2022 Exception Letter"

The court begins the summary judgment analysis citing plaintiff's MSJ at pages 1 and 7. The associated court references 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." 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 referring to with a 265-page "reverse" citation. What plaintiff wrote, with pointed references, was: "I filed the NOA and stay request on August 22, 2022, refuting that the RGR was professionally appropriate, correct or adequate to determine that interference to a ground water table would not occur, as required, at length in the record (e.g., AR0743-AR0747, and later at AR1295-AR1296, AR2865-AR2866, Ms. Carpenter's letter (AR1188-AR1205) and Claim 8, below)." (MSJ 7:18-21). The judge's citations appear to be material errors of some sort, beyond mere clerical errors, and point to a failure to properly examine the AR, leading to errors of fact and lending weight to other error findings demonstrated herein.

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

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

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

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

Court discusses the day-late determination in response to the stay request filed with the NOA, writing, "First, the court agrees with defendant's assertion that this claim is moot because there is no available remedy with respect to TRPA's delayed response." (OFR 15:2-3) The gloss echoing defendant continues, ". . . there is no further relief for the court to order." (OFR 15:4) 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)(l), "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

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

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

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

ROP 11.3 concerns stay requirements, including the two-day determination I've previously discussed, something an appellant "may request" and the Chair may issue following a determination. There is a reference to holding a hearing on the appeal at its "next regular meeting." To be consistent with 11.2's requirement to publish the appeal in the "next Governing Board agenda" the requirement to file the SOA on or before the 15th of the previous month must be recognized, with no other reference to scheduling requirements in 11.3. Scheduling in any event depends on 11.2 requirements, and defendant erred fatally in 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 it 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

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

E. Claim 5: "Application Signer in Perjury"

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

F. Claim 6: "Incomplete Application: Missing Initial Environmental Checklist"

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

G. Claim 7: "No Environmental Review Determination"

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

H. Claim 8: "Incomplete Application: Missing Necessary Reports"

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

I. Claim 9: "Prohibition of Excavation Interference with Ground Water Table"

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

J. Claim 10: "Conflict of Interest Violations"

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

K. Claim 11: "Impervious Coverage In Excess of Limitations"

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

L. Claim 12: "Illegal Appeal Hearing Voting Procedure"

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

VII. Conclusion

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

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

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

Alan Miller DATED: November 22, 2023

Alan Miller, *Plaintiff, in propria persona*

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

Syngineer1@gmail.com

Exhibit 1: Court Holidays, District Court for Eastern District of California

https://www.caed.uscourts.gov/caednew/index.cfm/clerks-office/court-holidays/ 133%
AT&T - Login https://www.youtube.c... whitemagicmuse@gm... syngineer1@gmail.co... YouTube The Stargate Experien... A CALL FOR AN UPRIS... More Proof o

2023 Federal Holidays

Monday, January 2	New Year's Day
Monday, January 16	Martin Luther King, Jr.'s Birthday
Monday, February 20*	George Washington's Birthday
Monday, May 29	Memorial Day
Monday, June 19	Juneteenth National Independence Day
Tuesday, July 4	Independence Day
Monday, September 4	Labor Day
Monday, October 9	Columbus Day
Friday, November 10	Veterans Day (Observed)
Thursday, November 23	Thanksgiving Day
Monday, December 25	Christmas Day

John L. Marshall (#145570)

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Tahoe Regional Planning Agency

P.O. Box 5310

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Executed on: November 22, 2023 Signature: 

Alan Miller

Plaintiff, in propria persona

International Public Notice: Worldwide Dependency

By Anna Von Reitz



We have all gone through the experience of being dependent as children. The question is: do you want to be dependent and regulated for the rest of your life? In Europe, they have decided to be permanently dependent on their government, which is a corporation.

Corporations are by nature faceless and unaccountable and when they operate as governmental service providers, they give all the special interests everything the special interests want.

The unions, the political parties, the big business interests, the public utilities, everyone gets in on the act, and they are all bent on controlling you (they are the parents, right?) and charging you for their "services" (which they pad because they can -- what are you, their dependent, going to do about it?)

Here is where Europe is as a result of being dependent on corporate government and lapping it up like pigs at a trough:

https://www.youtube.com/watch?v=2IOWBjoo7Ew

Here's the kind of treatment that follows from being dependent on corporations in the business of providing "essential government services":

https://www.youtube.com/watch?v=9_umqYU0YK4

This is why we are preparing to put an end to the guilty corporations and to punish the CEOs and Boards of Directors who are responsible for the insane "policies" and activities of these "public service corporations".

https://www.youtube.com/watch?v=2UxhZYDkyhw

We can do this, because we are not, as it turns out, dependent upon these corporations. We are the employers of these corporations. They take their paychecks from our pockets and all the "public" employees, too.

We are determined to put these employees back in their proper boxes and hold them fast to the limitations of their role in our business and our lives. We are not going the way of the WEF. Not embracing Corporate Feudalism. Not putting up with it.

As Margaret Thatcher said, the problem with European Socialism is that sooner or later, you run out of other people's money. And Europe has run out of our money.

The Trump Administration is deep in the process of auditing the departments and agencies of the now bankrupt UNITED STATES Municipal Government Corporation. This includes all its franchises:
the UK, CANADA, AUSTRALIA, FRANCE, GERMANY.... which is why all the phony "government" corporation leaders in Europe are upset and scared.

President Trump doesn't have any choice in performing this duty.
The settlement of the UNITED STATES' Chapter Seven Involuntary Bankruptcy requires a full audit and accounting of all these entities.

They are all broke.

They are also incompetent, oppressive, and in the process of being dissolved.

Trump's new Department of Government Efficiency is discovering the extent of the crime, corruption, collusion, waste, and abuse that has been

perpetuated against the interests of the American people, and we are taking full stock of it.

Although the knee-jerk reaction of those most responsible for these deplorable circumstances is to blame Trump for their own bankruptcy and their own mismanagement and gross overspending:

https://www.youtube.com/watch?v=9FCq4kbDGTc

--- let it be fully understood, that it doesn't matter who is President, the job of settling the bankruptcy would still have to be done.

Let it also be understood that "Maryland, Incorporated" -- the entity that this "Governor" is governor of --- in the video above, is a franchise of another corporation, doing business as "the United States of America, Incorporated".

Here he is, a State-of-State franchise operator, feeling sorry for all the Federal Employees who are being let go, blissfully unaware that Maryland, Inc., has no business saying anything about the mandatory down-sizing required by the Municipal Government bankruptcy.

Indeed, he appears to be ignorant that there is a bankruptcy at all. He also doesn't appear to be aware that his own "State of Maryland, Inc." has its own problems to deal with.

We are engaged in evaluating, reorganizing, liquidating, and picking-and-choosing which assets to retain, but it all adds up to between half and two-thirds of all "federal government" and agency personnel losing their jobs.

That is a minimum of around a million and a half public employees hitting the bricks, and there is nothing anyone can do about it, because: (1) their own bad behavior and incompetence and reckless spending caused this result, and (2) the remaining federal government corporation, the USA, Inc., infrastructure cannot afford to retain all the former Municipal employees.

So all those bemoaning the consequences of running out of other people's money, will just have to suck it up; and, those "federal" judges who are so

clueless as to think that they can stop this process also need a reality check. Mr. Trump, as the President in Receivership, is already acting under the orders of a higher court.

Everyone in Europe and in The United States and all around the world needs a bucket of ice cold water thrown over their heads and someone screaming, "Wake up!" in their ears.

We've all been in La-La-Land far too long. Too many "government corporations" have allowed Britain to lead them into perdition, signing agreements they are not competent to sign, committing acts of racketeering against the people they are supposed to serve, and writing checks they can't pay.

Not only in Ukraine and in Gaza, but generally, Europe and The United States and the former Commonwealth countries have been following the Bad Faith and Bad Example of the United Kingdom Government and the British Crown Corporation. So much so, that the British PM took it for granted that we, Americans, would pay the Security Guarantee (our blood and our money) as part of their contract granting them the benefit of the Rare Earth Minerals in Ukraine.

Forget the Ukrainian people who are the actual owners of the minerals. Forget the stupid Americans acting as "the Muscle" for Britain to unjustly enrich itself at our expense.

While the so-called "western democracies" --- which aren't supposed to be functioning as "democracies" at all, and wouldn't be, if they hadn't allowed British Territorial corporations and Municipal corporations to Nanny State them to death, are blindly and stupidly groping their way toward WWIII, the actual people of the countries impacted by this Great Fraud must stand up and manage their own affairs, direct their own employees, and not expect each Ship of State to steer itself.

We are not the dependents of these foreign "service" corporations; we are the employers of these run amok beehives.

We are the people of The United States, actual and factual; they, our employees, are all Legal Fictions, as unsubstantial as the paper and air that give them form.

We are people. They are persons, subject to the law of persons.

Those who are having trouble with this concept need to reference American Law and Procedure, Volume 13, page 137, 1910: "The law of persons is the law of status or condition."

Public officials, public employees, corporations, military conscripts, prisoners, indentured servants, citizens, civil servants..... are all persons.

The actions of legislatures produce a form of "law" governing the employees and officers of corporations and corporations in general, which are considered to be persons subject to this form of law. This includes corporations in the business of providing "essential government services" under contract--- that is, all the Federal Subcontractors.

We, the people of this country, the actual owners of the assets of The United States and the actual employers of these corporations, live under American Common Law --- an entirely different standard.

It's time for all our employees ---worldwide, at this point--- to realize their position as insolvent debtors and as franchise operators.

It's also important for all the corporations acting "as" governments to understand that they are incompetent, legally and lawfully, to carry on wars, commit national assets, and also that they are illegally latching onto national credit and abusing their positions of trust.

Our national government is in Session for the first time in many years; other national governments are organizing for the first time since World War II. These separate and unincorporated governments, of, for, and by the people of each country, are the sovereign entities and actual owners of all assets that these corporations are illegally, unlawfully, and immorally abusing.

These "governmental services corporations" are pretending to represent the people of each country, without however, having any explicit agreement or authorization allowing the corporations to replace the national government ---- especially when the national government is in Session.

In this country, certain misguided and misdirected Subcontractors of our Subcontractors (USA, Inc. hires the United States Government, Inc., which hires the FBI, Inc., so in fact, the FBI is a Subcontractor of our Subcontractor's Subcontractor) have attempted to mischaracterize the people of this country who are exercising their Constitutional Guarantee to their right to peaceably assemble and to exercise their republican form of government, as "domestic terrorists" and as "sovereign citizens" --- which is an oxymoron having no meaning.

Make no mistake. We are Foreign Sovereigns with respect to our British Territorial U.S. Citizens. They are the only citizens involved.
The quicker they learn this lesson, the better.

We wish to make it crystalline clear to everyone in receipt of this International Public Notice, that the Federal Bureau of Investigation, Inc. is being weaponized to provide a "fourth party" lack of accountability for the U.S. Congress. We also wish to make it clear that the U.S. Congress, the Trump Administration, the USA, Inc., the USA, LLC, the Federal Bureau of Investigation, Inc., and indeed, all Federal Persons and Federal Subcontractors, are under demand to honor our Guarantees and their own contractual obligations.

The U.S. Supreme Court facing the chaos at the end of so-called American Civil War and the use of declared States of Emergency to justify the over-reaches of Federal Employees against the people of this country decided a landmark case in 1866 which still stands, Ex Parte Miliigan, codified as U.S. Code 71 U.S. 2; and, quoting Section 98:

"Therefore, anyone who declares the suspension of constitutionally guaranteed rights (which we are heir to and which we claim via expatriation from any conferred status as federal citizens) and attempts to enforce such suspension within the 50 independent, sovereign, continental United States of

America, is making war against our constitution(s), and, therefore, we the people. They violate their constitutional oath and, thus, immediately forfeit their office and authority and their proclamations may be disregarded with impunity...."

The idea that employees of ours have any right to mischaracterize us, impersonate us, or otherwise impose their prejudices upon our good nature are self-evidently illogical and self-defeating. The long-standing nature of these misunderstandings and fraud schemes against the people of this country and the bureaucratic means used to impose unconscionable foreign citizenship contracts on them, notwithstanding, we are who we are and we are acting in our lawful capacity as living people, not creatures of statute.

Ever since World War II we have borne a disproportionate and unfair burden for the rest of the world. We have funded the reconstruction of many other countries and provided for their defense. We have provided their loan guarantees. We have underwritten their currencies and indemnified their business operations. This has all been done "in our names" by our employees, without our knowledge or consent.

We awaken to find that they have allowed our precious metals to be taken offshore and distributed in support of the Central Banks operated as a consortium by the Bank of International Settlements.
This has been done "in our names" without our knowledge or consent and is a theft-in-fact that was expedited by the British Government acting in Bad Faith and Breach of Trust, implemented by the British Territorial United States and by U.S. Citizens who were misdirected as members of the United States Navy to transport our precious metals offshore for "safekeeping" from which they have never been returned.

This has sparked concern that our only thanks for this magnanimity expressed "for" us by our British Territorial Employees may be the actual theft of our assets for which the U.S. Congress is responsible and for which the British Parliament is accountable, and for which their Principals owe us the return, unharmed.

A large number of the "European Governments" are in fact and have since WWII, been operating as franchises of the UNITED STATES Corporation and the USA Corporation. They have been supported using American resources the whole time. Part of the desperate thrust of these European "Management Organizations" to foment and promote another World War via the Mercenary Conflicts in Ukraine and Gaza has been caused by the bankruptcy of the UNITED STATES Corporation and their franchises.

The American money is drying up and the money they can racketeer off the Old Folks at home isn't sufficient for their tastes, so they've decided to go to war in hopes of making a big profit --- again.

This is how they dug themselves out before. Both World War I and World War II were Mercenary Conflicts --- wars for profit, paid for in blood and misery.

Immoral men like Macron and Starmer, who have no sense, imagine that they will come out ahead, by doing what they have done before, but time moves onward. Things are different now.

We have remembered the history and have no cause to relive it.

Issued by:
Anna Maria Riezinger -- Fiduciary
The United States of America
In care of: Box 520994
Big Lake, Alaska 99652

March 6th 2025

See this article and over 5300 others on Anna's website here: www.annavonreitz.com

To support this work look for the Donate button on this website.

Exhibit 3

April 17, 2025 Staff Report to Planning Commission

City of South Lake Tahoe
Report to Planning Commission

Meeting Date: April 17, 2025

Title: TRPA Multi-Family Dwelling Project Application – 3900 & 3908 Lake Tahoe Boulevard Affordable Housing Project, APNS 029-170-001 & 029-170-002, File #24-173

Location: 3900 & 3908 Lake Tahoe Boulevard, APNs 029-170-001 & 029-170-002

Responsible Staff Member: John Hitchcock, Planning Manager

Background:

Novin Development Corporation and SMR Development LLC, in collaboration with the City of South Lake Tahoe, are proposing a 75-unit multifamily affordable housing project at 3900 and 3908 Lake Tahoe Boulevard.

On June 3, 2022, the City of South Lake Tahoe Successor Agency released a Notice of Availability (NOA) to Sell/Lease Surplus Property located at 3900 and 3908 Lake Tahoe Boulevard (APNs: 029170-01 and 029-170-02) for development as an affordable housing project (see Location Map below). Per the Surplus Land Act, the NOA provided 60 days for interested parties to notify the Successor Agency regarding interest in acquiring the property. Three offers were submitted from Novin Development and SMR Development (Novin), Saint Joseph Community Land Trust, and the City of South Lake Tahoe. The proposal submitted by Novin was determined to be the most consistent with the criteria outlined in the NOA. At its August 23, 2022, meeting, the Successor Agency approved a Letter of Intent outlining the timelines and commitments associated with negotiating a purchase and sale agreement, conducting due diligence, and escrow.

On November 7, 2023, the City Council adopted Resolution 2023-105, declaring property located at 3900 and 3908 Lake Tahoe Boulevard as exempt surplus property, authorizing and directing the Mayor to execute the Purchase and Sale Agreement.

The proposed Project is a mixed-income housing project that will consist of 72 units, deed-restricted to below 80 percent of the average median income, two achievable deed-restricted units, and one property manager's unit. The Project includes on-site parking, on-site resident amenities (e.g., active and passive open spaces), and landscaping.

Novin Development has submitted the application to the City utilizing the streamlined process provided by California Senate Bill 35 (SB 35). The intent of SB 35 is to expedite and facilitate the construction of affordable housing in cities and counties. Qualifying SB 35 projects are reviewed for compliance and consistency with the City's objective standards (i.e., Tourist Core Area Plan, Appendix C), and the review is a ministerial approval process and is not subject to discretionary review and is exempt from California Environmental Quality Act (CEQA) review. This process does not allow public hearings to consider the merits of the Project; rather, only ministerial design review of the development is allowed, which must be objective and strictly focused on assessing compliance with criteria required for streamlined projects as well as objective design review of the Project. City staff has prepared and will issue a separate ministerial City Design Review Permit.

TRPA is not subject to SB 35; therefore, a separate discretionary review and approval are required. Pursuant to the City/TRPA Memorandum of Understanding, projects in a Regional Center with less than 100,000 square feet of new floor area review are delegated to the City. In accordance with TRPA Code of Ordinances Chapter 2, Subsection 2.2.2.B.2(a), multi-residential housing greater than four units requires Hearings Officer review. Thus, the Planning Commission, pursuant to the MOU, will act in its capacity as the TRPA Hearings Officer to review and approve the proposed Project.

LOCATION MAP



Issue and Discussion:

Project Description

The proposed Project is the development of two vacant sites located in the vicinity of the intersection of Lake Tahoe Boulevard and Pioneer Trail (see Location Map above). The parcels were previously developed with two tourist accommodation uses (Jackpot Inn and Sierra Lodge), which were purchased by the City of South Lake Tahoe Successor Agency and demolished.

The proposed Project includes constructing a four-story structure with covered podium parking located at ground level, as well as a second-floor courtyard with outdoor seating and a tot lot. The Project incorporates shed roofs, articulated façades, and landscaping at street level along Lake Tahoe Boulevard and Pioneer Trail. Primary access to the podium parking is from Pioneer Trail, and pedestrian access will be provided from the existing sidewalks along Lake Tahoe Boulevard

and Pioneer Trail to the building's entrances. The Project will include an office, learning center, and indoor bike storage for the residents.

The proposed façade incorporates fiber cement lap siding, stucco, corrugated metal panels, and natural stone veneers in muted moderate to dark earthtone colors. The majority of the roof will be constructed with composite shingles, and some pitches constructed of standing seam metal panels. Please reference Attachment 02 for the exterior material board and building rendering.

The Project will consist of 75 units with the following unit mix:

- 31 one-bedroom deed-restricted units
- 23 two-bedroom deed-restricted units
- 18 three-deed restricted bedroom units
- 2 two-bedroom deed-restricted live-work units
- 1 two-bedroom manager's unit.

Units range in size from 567 square feet to 1,001 square feet.

Site Description

The project site is two vacant parcels at 3900 and 3908 Lake Tahoe Boulevard. The site is primarily surrounded by existing commercial and tourist uses.

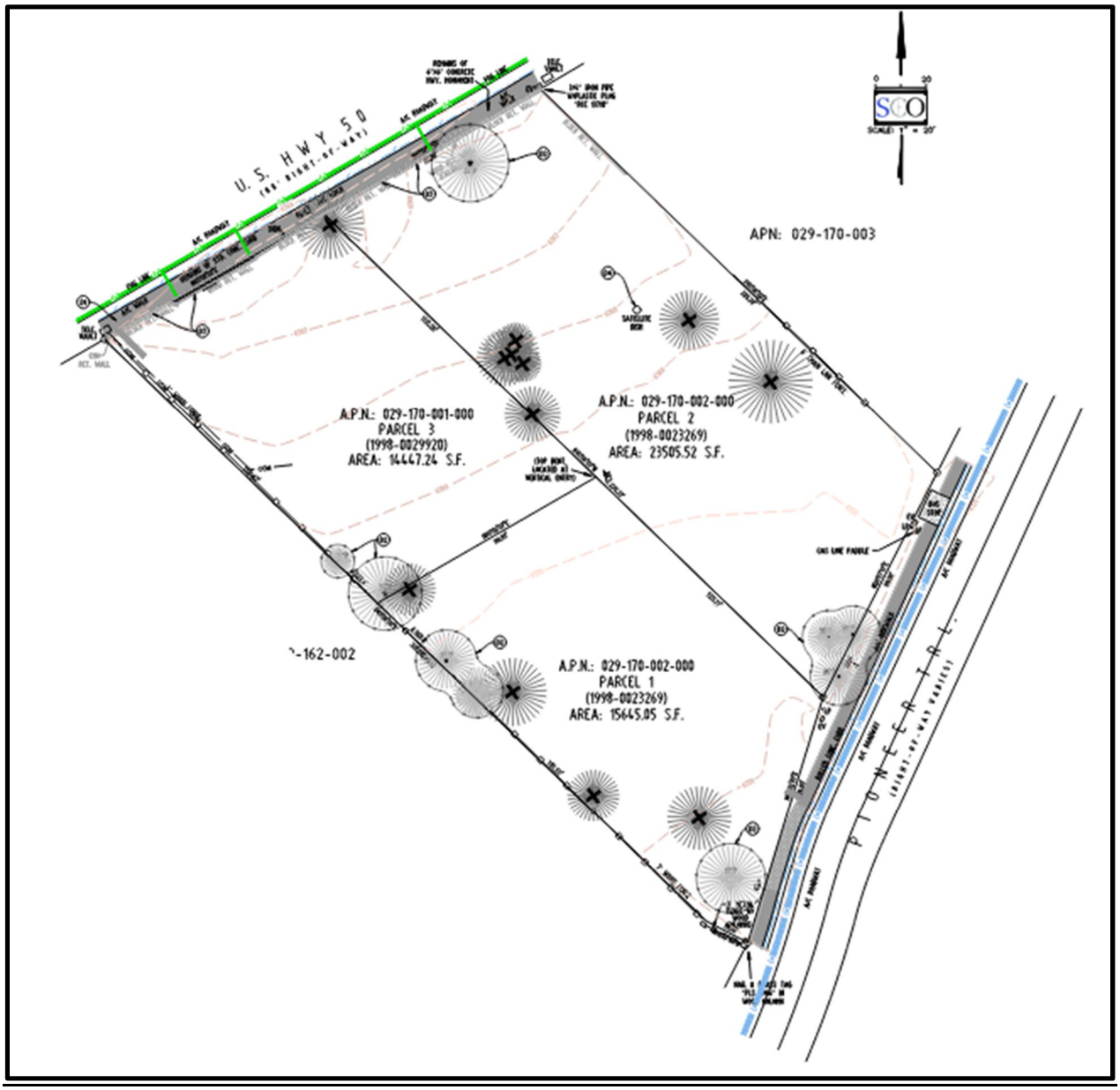
Existing Site Factors	
Project Area Size	53,598 square feet/1.23 acres
Assessor's Parcel Number	029-170-001 & 029-070-002
General Plan Land Use Designation	Tourist Center
Area Plan	Tourist Core Area Plan
Zoning	Tourist Center Mixed-Use
Flood Zone	X Unshaded, Area of Minimal Flood Hazard, FIRM Panel 06017C0380F
Airport Land Use Compatibility Plan	Overflight Notification Zone

Surrounding Land Uses/Zoning			
	General Plan Land Use	Zoning	Development Status
North	Low-Density Residential	Plan Area Statement 090, Tahoe Meadows	Developed Residential Uses and Vacant Parcels
South	Tourist Center and High-Density Residential	Tourist Center Mixed-Use and Residential	Developed Tourist Accommodation and Residential Uses
West	Tourist Center	Tourist Center Mixed-Use	Developed Commercial Uses
East	Tourist Center	Tourist Center Mixed-Use	Developed Commercial Uses

The project site was initially developed as a gas station and has sat vacant since its purchase by the Successor Agency in the 1990s. The site is relatively flat, with some mature conifers ranging in size from 14 inches to 42 inches. An A/C sidewalk is constructed adjacent to the project site along Lake Tahoe Boulevard and Pioneer Trail.

TRPA has verified the project site as both Land Capability Class 5 and 7, both considered high-capability, with 14,471 square feet of based allowable land coverage and 31,528 square feet of verified land coverage. The project site has 17,057 square feet of excess land coverage that has yet to be mitigated.

SITE SURVEY



Land Uses and Zoning Consistency

Area Plan: The proposed Project is in the Tourist Core Mixed-Use District, which allows multifamily dwellings as an allowed use.

Density

The Tourist Center Mixed-Use District density standard for multifamily uses is a minimum of 12 units per acre and a maximum of 65 units per acre. The Project is required to have at least a minimum of 14 units and a maximum of 79 units. The proposed Project is 75 units, which is consistent with the adopted density standards.

Flood Zone

Based on Map 06017C0380F (April 3, 2012), the Project is located in Zone X Unshaded, which is an area determined to be outside of the 0.2% annual chance floodplain.

Building Design

The proposed Project includes constructing a four-story structure with covered podium parking located at ground level, as well as a second-floor courtyard with outdoor seating and a tot lot. The Project incorporates shed roofs, articulated façades, and landscaping at street level along Lake Tahoe Boulevard and Pioneer Trail to create visual interest. The proposed façade incorporates fiber cement lap siding, stucco, corrugated metal panels, and natural stone veneers in muted moderate to dark earthtone colors.

The building façade planes are offset horizontally and vertically to meet viewshed protection requirements, which also creates façade contrast and visual interest and shadowing effects that reduce the overall massing of the proposed structure.

The Project features a 3:12 shed roof throughout; however, these roofs are constructed in varying heights and directions to create visual interest and break up the roofline. The roof material will be fire-rated composite shingles in a dark gray color. The Project also incorporates standing seam metal roofs at the pedestrian street level to further create an articulated façade and provide weather protection for pedestrian traffic.

The building itself will feature moderate to dark earth-tone colors throughout its design. The building will feature various shades of black, brown, and green for its siding and natural stone veneer, facing Lake Tahoe Boulevard and Pioneer Trail.

All colors and materials will be consistent with Appendix C of the Tourist Core Area Plan, which aims to improve and maintain scenic quality (see Building Form and Proposed Materials Palette below)

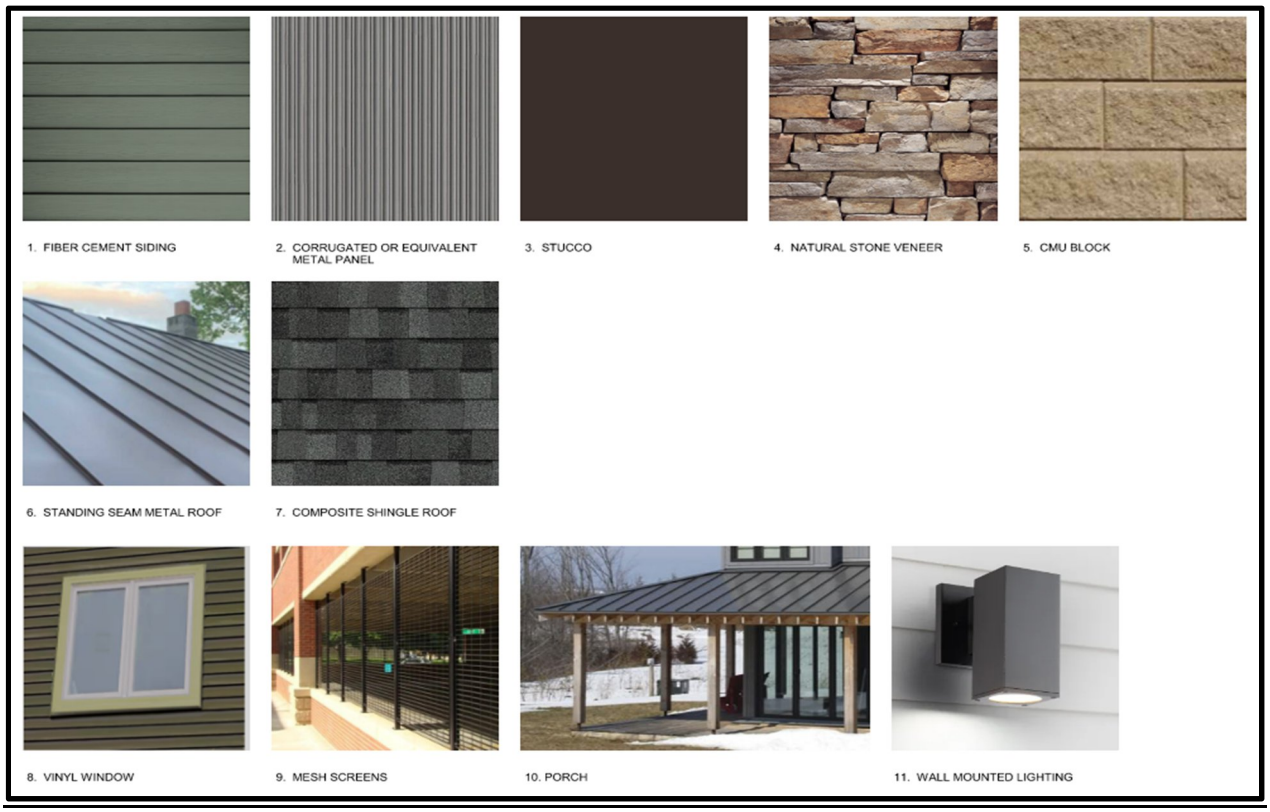
VIEW FROM LAKE TAHOE BOULEVARD



VIEW FROM PIONEER TRAIL



PROPOSED COLORS AND MATERIALS



Building Placement and Build-to-Line

The TCAP requires a building to be constructed at the required setback unless the Director grants a waiver by incorporating entry courtyards, plazas, entries, outdoor eating areas, or other public spaces, and the building incorporates a welcoming pedestrian entry feature.

The proposed Project incorporates an entry courtyard/plaza within extensive landscaping, creating a pedestrian entry along the Lake Tahoe Boulevard and Pioneer Trail street frontages, and thus qualifies for a waiver from the Build-to-Line standard.

Corner Build Area

This standard is not applicable.

Setbacks

The required setbacks for structures per TVAP standards (Appendix C, Table 5) are:

- Street Frontages along Lake Tahoe Boulevard: 30 feet
- Street Frontage along Pioneer Trail: 20 feet
- Interior Side Yard Setback: 10 feet
- Rear Setback: Not applicable

The proposed Project meets the required setbacks.

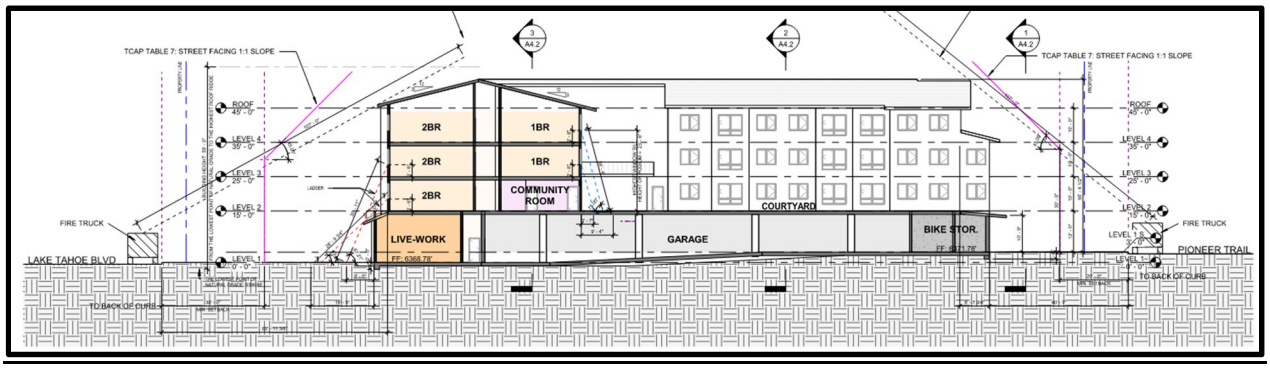
Height and Roof Pitch & Viewshed Protection

The maximum building height for the Tourist Center Mixed-Use District is 65 feet. The Project proposes a maximum height of 59', which meets the standard.

The building is proposed with a 3:12 pitched roof with multiple planes, which meets the TCAP minimum standard of 3:12.

The TCAP requires that all street-facing structures not interrupt a line of 1:1 slope extending upward from 30 feet above the existing grade of the street-facing setback line for viewshed protection. The Project, as designed, meets this standard, as illustrated in the figure below.

VIEWSHED SETBACK



Landscaping

The proposal includes sufficient landscaping dominated by native species between the structure and the public sidewalks along Lake Tahoe Boulevard and Pioneer Trail. Vegetation helps create a pleasant experience for patrons, buffering noise from adjacent streets. The proposed project landscaping plan is consistent with the TCAP standards.

Open Space

The TCAP requires a minimum of 100 square feet per unit for a total of 7,500 square feet. The proposed Project proposes approximately 13,250 square feet of usable residential open space, which is consistent with this standard. The open space shall be usable and be convenient for outdoor living and/or recreation.

The proposed open space includes accessible lawn areas, paved plazas, a dog play area on the ground floor, and a second-story courtyard with a play structure, benches, tables, and barbecue facilities.

Bicycle Parking

The Project is consistent with the bicycle parking standards. The TCAP requires one parking space per 4 units for short-term and one per unit for long-term parking. The minimum for short-term parking is 18 spaces, and 75 spaces for long-term parking.

The Project includes an internal storage room to accommodate 75 long-term parking spaces and incorporates short-term parking infrastructure near the building entrances on the south and north sides of the building.

Snow Storage

City Code Section 6.10.140 requires developments to provide adequate snow storage areas within the project area. The plans indicate that snow will be accommodated in the aeras between the front façades and the adjacent roads. The plans set indicates approximately 3,488 square feet of snow storage area. Approximately 2,962 square feet at ground level and 526 square feet of storage space on the second-floor courtyard.

In the event of a high snow year, the permittee has indicated that snow removal will be hauled off-site.

Lighting

TRPA and City Code require outside lighting to have cutoff shields that conceal the lighting source. The plan set submitted includes examples of proposed lighting, which incorporate cutoff shields. However, a standard condition of approval is included in the TRPA Permit, requiring all lighting to meet TRPA exterior lighting standards.

Parking and Driveway Standards

The Project includes one driveway with egress and ingress from Pioneer Trail. The width of the driveway is consistent with the City standard of at least 20 feet and not more than 30 feet in width for a driveway measured at the property line.

Pedestrian Sidewalks

Pedestrian sidewalks currently serve the project area on Lake Tahoe Boulevard and Pioneer Trail. The Project proposes to construct pedestrian paths to connect the building entrances to the existing sidewalk.

Parking Ratios

The parking demand ratio for multifamily residential projects in the TCAP is one space per unit. Thus, the demand ratio for the proposed Project is 75 spaces. The Project is proposing 71 parking spaces. However, pursuant to TRPA Code Section 34.4.1, no parking minimums shall apply to a 100 percent deed-restricted project that is located within a Town Center, Regional Center, or High-Density Tourist District. The proposed Project is located in a Regional Center, is a fully deed-restricted multifamily project and thus is exempt from the parking demand ratio.

Defensible Space and Very High Fire Hazard Severity Zone

The proposed Project is in a Very High Fire Hazard Severity Zone, as determined by the California Department of Forestry and Fire Protection pursuant to Government Code Section 51178. The permit has been conditioned to require all proposed structures to meet California Building Code 7A requirements for materials and construction for exterior wildfire exposure.

Vehicles Miles Travelled (VMT)

The 75 deed-restricted units would generate would generate 1,257 VMT. However, the Project is exempt under TRPA's "Guidance for Assessment of Vehicle Miles Traveled (VMT) Impacts of Projects in the Tahoe Basin," dated April 14, 2020, because it will be deed restricted affordable housing, is located in a Town Center, and is proposing to reduce parking beyond what is required by the City of South Lake Tahoe. The VMT Guidance Memo is available at: www.trpa.org/wp-content/uploads/Framework-for-VMTMethodology.pdf.

Public Transit

There is a transit stop located on in front of the project site on both Lake Tahoe Boulevard and Pioneer Trail.

Tree Removal

The site survey indicates a total of 21 trees on the project site, with all being greater than 14 inches in diameter at breast height (dbh). A total of 12 are proposed to be removed. Trees proposed for removal include five trees that are greater than 30 inches dbh. Trees greater than 30 inches dbh are considered old growth under the TRPA Code, Chapter 61. Old-growth trees may be removed if there is no reasonable alternative. All the trees proposed for removal are either impacted by the proposed building foundation or the construction of a paved pedestrian path.

All existing trees are required to be protected during construction.

Land Coverage

The project area has 31,528 square feet of verified land coverage, 564 square feet of verified off-site land coverage, and 17,057 square feet of excess land coverage. The Project is proposing 36,797 square feet of on-site land coverage and 82 square feet of off-site land coverage. The Project will require a transfer of land coverage to the project area and the mitigation of the existing excess land overage.

Land coverage calculations for the overall Project are provided below.

R	
Project Area	53,598 SF
Land Capability	7 (21,439 SF) / 5 (32,159 SF)
Base Allowable Coverage	14,174 SF
Verified Coverage	31,528 SF
Excess Coverage	17,057
Excess Coverage Factor	0.0275
Verified Off-Site Coverage	564 SF
Project Coverage Summary	
Proposed Coverage	36,797 SF
Proposed Off-Site Coverage	82 SF
Coverage Transfer Requirement	5,269 SF

The Project contains 17,057 square feet of excess land coverage. The TRPA Permit is conditioned to require the permittee to mitigate the excess coverage pursuant to the TRPA Code of Ordinances by submitting an in-lieu or retiring off-site land coverage.

Best Management Practices (BMP)

The Project proposes on-site BMPs to treat all runoff on-site. A review of the BMP Calculation Spreadsheet indicates that there is an excess of 276.1 cubic feet of runoff. The TRPA Permit is conditioned to require the permittee to submit a revised plan set with the building application to treat the excess runoff.

Development Rights

TRPA has reserved a total of 75 residential bonus units for the proposed projects.

Affordable Housing Deed Restriction

TRPA Code of Ordinances, Chapter 90, defines Affordable Housing as:

"Residential housing, deed-restricted to be used exclusively [for . . .] lower-income households (income not in excess of 80 percent of the respective county's median income) and [for] very low-income households (not to exceed 50 percent of the respective county's median income). Such housing units shall be made available to individuals whose median income does not exceed the recommended state and federal standards. Each county's median income shall be determined according to the income limits published annually by the US Department of Housing and Urban Development and, if applicable, the California Department of Housing and Community Development."

The TRPA Permit requires a deed restriction to be recorded permanently restricting the use of the multifamily housing units prior to the residential bonus units being awarded to the Project.

Findings:

Regional Plan Compliance

TRPA Regional Plan/Conceptual Regional Land Use: The proposed Project is located in the Tourist District as designated in the TRPA Conceptual Regional Land Use Map. Tourist areas are urban areas that have the potential to provide intensive tourist accommodations and services or intensive recreation. This land use classification also includes areas recognized by the Bi-State Compact as suitable for gaming. These lands include areas that are:

- already developed with high concentrations of visitor services, visitor accommodations, and related uses;
- of good to moderate land capability (land capability districts 4-7);
- with existing excess land coverage; and
- located near commercial services, employment centers, public services and facilities, transit facilities, pedestrian paths, and bicycle connections

The proposed use is consistent with this designation and would locate high-density housing within close proximity to commercial, public service, and employment centers.

The proposed Project is located in a designated Tourist Center and Regional Center District. General Plan. Development patterns in the Regional Center have been and should continue to

be more intensive. The Regional Center is targeted for redevelopment in a manner that improves environmental conditions, creates a more sustainable and less auto-dependent development pattern and provides economic opportunities in the Region.

This Project is also consistent with the following Regional Plan goals and policies:

Goal LU-1: Restore, maintain, and improve the quality of the Lake Tahoe Regional for the visitors and residents of the Region.

Policy LU-1.2: Redeveloping existing Town Centers is a high priority.

Policy LU-3.3: Development is preferred in and directed towards centers, as identified on the Regional Land Use Map.

Policy LU-3.5: Development is discouraged in and directed away from environmentally-sensitive lands and areas furthest from non-residential support services.

Goal HS-1: Promote housing opportunities for full-time and seasonal residents as well as workers employed within the Region

Policy HS-1.2: Local governments will be encouraged to assume their "fair share" of the responsibility to provide lower and very-low-income housing.

Policy HS-1.4: Affordable or government-assisted housing for lower-income households should be located in close proximity to employment centers, government services, and transit facilities.

The Project is being developed on an infill parcel that was previously developed with tourist accommodation uses, and located in a preferred center within close proximity to an employment center, transit services, and bike and pedestrian facilities. Moreover, the Project will provide housing for full-time residents at the lower income level and assist the City in meeting Regional Housing Needs Allocation and its "fair-share" of affordable housing units.

Tourist Core Area Plan

The proposed Project is consistent with the Tourist Core Area Plan goals, policies, and the Zoning Map.

The proposed Project is located within the Tourist Core Area Plan and is zoned as a Tourist Center Mixed-use District (TSC-MU). This district allows for and promotes high-density residential uses within proximity to employment and recreation opportunities.

Policy LU-1.2 – Promote the revitalization of the Tourist Core by encouraging a mixed land use pattern that combines tourist accommodation, residential, commercial, public facilities, and public spaces to serve visitors and locals alike.

Policy LU-2.1 – Create an intriguing built environment by promoting the use of architectural themes in new development that complement the surrounding natural beauty. Encourage the use of pitched roofs, natural colors and materials, or natural appearing materials such as rock and wood.

Tahoe Regional Planning Agency Required Findings

The following findings in Chapters 3, 4, 21, 30, 37, and 61 of the TRPA Code of Ordinances must be made to approve the Project.

Chapter 3 – Required Findings"

Finding 3.3.2.A: The proposed Project could not have a significant effect on the environment, and a finding of no significant effect shall be prepared in accordance with Rules of Procedure Section 6.6.

Rationale: Based on the information provided in this staff report, the project application, the Initial Environmental Checklist (EIC), and Article V(g) Findings Checklist, there is sufficient evidence demonstrating that the proposed Project, with the proposed conditions in the TRPA Permit, will not have a significant effect on the environmental and a finding of no significant effect shall be prepared in accordance with Rules of Procedures.

Chapter 4 – Required Findings"

Finding 4.4.1.A: The Project is consistent with and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, plan area statements and maps, the Code, and other TRPA plans and programs.

Rationale: Based on the information provided in this staff report, the project application, the Initial Environmental Checklist (IEC), and Article V(g) Findings Checklist, there is sufficient evidence demonstrating that the proposed Project is consistent with and will not adversely affect the implementation of the Regional Plan, including all applicable Goals and Policies, the Tourist Core Area Plan, the TRPA Code and other TRPA plans and programs

The Proposed Project is located in the Tourist Core Area Plan and is a designated tourist center and is located within the Tourist Center Mixed-Use District. The district allows for high-density residential uses. The Project is consistent with the area plan design standards. Therefore, the proposed Project as conditioned in the TRPA Permit, is compliant with all provisions of the Regional Plan and will not adversely affect its implementation.

Finding 4.4.1.B: The Project will not cause the environmental threshold carrying capacities to be exceeded.

Rationale: Staff has completed the Project Review Conformance Checklist and Article V(g) Findings and reviewed the Initial Environmental Checklist (IEC) prepared for the proposed commercial redevelopment. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities.

The proposed Project, as conditioned in the TRPA permit, will not cause any significant effects on the environment. The proposed Project will use verified existing land coverage and is required to transfer in land coverage and mitigate existing excess land coverage.

The Project is designed to meet the Tourist Core Area Plan development and design standards, which require redevelopment to incorporate appropriate colors and materials that improve visual quality and incorporate architectural treatment to create visual interest. Implementation of these measures and permit conditions of approval will result in an improvement of the site's contribution to the scenic quality of the TRPA Scenic Roadway Unit #35. The Project will have a positive impact on the scenic and community design thresholds.

Finding 4.4.1.C: Wherever federal, state, or local air and water quality standards apply for the Region, the strictest standards shall be attained, maintained, or exceeded pursuant to Article V (d) of the Tahoe Regional Planning Compact.

Rationale: The proposed Project will not alter federal, state, or local air or water quality standards currently in place. Therefore, the strictest standards will continue to be attained, maintained, or exceeded pursuant to Article V (d) of the Tahoe Regional Planning Compact. The Project is required to comply with all temporary and permanent water quality BMP requirements, which will prevent any adverse impacts to federal, state, or local air and water quality standards. See Rationale 4.4.1.B above.

Finding 4.4.2: In order to make the findings required by subparagraph 4.4.1, TRPA evaluated the proposed Project pursuant to the provisions of subsection 4.4.2.

Rationale: In making the findings required by subparagraph 4.4.1, City Staff evaluated the proposed Project pursuant to the provisions of subsection 4.4.2 and found that it would not negatively impact a compliance measure, resource capacity, target date or interim target date, threshold, or Environmental Improvement Program (EIP) project.

Chapter 30 – Required Findings"

Finding 30.4.4 1. The relocation is to an equal or superior portion of the parcel or project area, as determined by references to the following factors:

a) Whether the area of relocation already has been disturbed
b) The slope of and natural vegetation on the area of relocation
c) The fragility of the soil on the area of relocation
d) Whether the area of relocation appropriately fits the scheme of use of the property
e) The relocation does not further encroach into a stream environment zone, backshore, or the setbacks established in the Code for the protection of stream environment zones or backshore

f) The Project otherwise complies with the land coverage mitigation program set forth in section 30.6

2. The area from which the land coverage was removed for relocation is restored in accordance with Subsection 30.5.3.

3. The relocation is not to Land Capability Districts 1a, 1b, 1c, 2, or 3 from any higher numbered land capability district.

4. If the relocation from one portion of a stream environment zone to another portion, there is a net environmental benefit to the stream environment zone.

5. Retirement of land coverage in the affected stream environment zone in the amount of 1.5:1 of the amount of land coverage being relocated within a stream environment zone; or

6. For projects involving the relocation of more than 1,000 square feet of land coverage within a stream environment zone, a finding, based on a report prepared by a qualified professional, that the relocation will improve the functioning of the stream environment zone and will not negatively affect the quality of existing habitats.

Rationale: TRPA has verified 31,528 square feet of Class 5 and Class 7 (high-capability) land coverage in the project site. All verified coverage will be located on equal to or superior high-capability lands.

Finding 37.7 The Tahoe Valley Area Plan (Appendix B) requires three or four-story buildings in Town Centers to meet findings 1,3, 5, and 9 in Section 37.7 of the TRPA Code of Ordinances.

1. When viewed from major arterials, scenic turnouts, public recreation areas or the waters of Lake Tahoe, from a distance of 300 feet, the additional height will not cause a building to extend above the forest canopy, when present, or a ridgeline. For height greater than that set forth in Table 37.4.1-1 for a 5:12 roof pitch, the additional height shall not increase the visual magnitude beyond that permitted for structures in the shoreland as set forth in subsection 66.3.7. Additional Visual Magnitude, or Appendix H, Visual Assessment Tool, of the Design Review Guidelines.

Rationale: The proposed Project is not visible from Lake Tahoe, scenic turnout, or a public recreation area; however, it is visible from a major arterial (i.e., Lake Tahoe Boulevard and Pioneer Trail). The visual simulations prepared by the permittee indicate that the proposed height does not extend above the forest canopy or a ridgeline.





2. With respect to that portion of the building that is permitted the additional height, the building has been designed to minimize interference with existing views within area to the extent practicable.

Rationale: The proposed Project is setback to not interrupt a line of a 1:1 slope extending upward from 30 feet above the existing grade of the two street-facing setback line in order to reduce its overall massing and minimize impacts on existing views. The roof is also limited to a shallow 3:12 pitch to limit interference of existing views and not to extend above the existing tree canopy.

3. The portion of the building that is permitted additional building height is adequately screened, as seen from major arterials, the waters of lakes, and other public areas from which the building is frequently viewed. In determining the adequacy of screening, consideration shall be given to the degree to which a combination of the following features causes the building to blend or merge with the background: a) the horizontal distance from which the building is viewed; b) the extent of screening; and c) proposed exterior colors and building materials.

Rationale: Views into the proposed project site from adjacent arterials will be partially screened by proposed landscaping. The Project proposes extensive landscaping between the building façade and the adjacent streets, which includes Jeffrey pines, quaking aspens, and a variety of ground-level shrubs.

4. When viewed from a TRPA scenic threshold travel route, the additional building height granted a building or structure shall not result in the net loss of views to a scenic resource identified in the 1982 Lake Tahoe Basin Scenic Resource Inventory. TRPA shall specify the method used to evaluate potential view loss.

Rationale: An analysis of the 1982 Lake Taho Basin Scenic Resource Inventory indicates that the proposed project site is located within the peripheral viewshed of Scenic Resource 33-2. The resource is identified as a view of natural landscape from the roadway and is described as "focal view of Mt. Tallac down strip is dominated in foreground by commercial activity and road. Some coniferous forest remains on the north side of the road."

Scenic quality for this resource is designated as low. At the time this resource was designated, the project site was developed with two motels developed in the 1960s, which did not incorporate the mountain architectural aesthetics required of today's standards and likely contributed to the low scenic quality rating.

The proposed Project will incorporate the desired architectural aesthetics of TCAP, which include the use of natural and natural-looking materials, earth-tone colors, façade articulation, pitched roofs, and varying roof heights. The incorporation of these design elements is expected to improve the scenic quality rating, as it will replace older strip development with newer development that complements rather than detracts from the naturally appearing landscape. Furthermore, the location of the project site

does not obstruct the view of Mt. Tallac, which will remain visible in the far background.

Finding 66.1.3: The Project shall not cause a decrease in the numerical ratings assigned to roadway or shoreline units, including the scenic quality rating of the individual resources within each unit, as recorded in the 1982 Scenic Resources Inventory and shown in Tables 13-3, 13-5, 13-8, and 13-9 of the Study Report for the Establishment of Environmental Threshold Carrying Capacities, October 1982. The criteria for rating scenic quality as identified in the referenced study report shall be used to determine if a project will cause a decrease in the numerical rating.

Rationale: An analysis of the 1982 Lake Taho Basin Scenic Resource Inventory indicates that the proposed project site is located within the peripheral viewshed of Scenic Resource 33-2. The resource is identified as a view of natural landscape from the roadway and is described as "focal view of Mt. Tallac down strip is dominated in foreground by commercial activity and road. Some coniferous forest remains on the north side of the road."

Scenic quality for this resource is designated as low. At the time this resource was designated, the project site was developed with two motels developed in the 1960s, which did not incorporate the mountain architectural aesthetics required of today's standards and likely contributed to the low scenic quality rating.

The proposed Project will incorporate the desired architectural aesthetics of TCAP, which include the use of natural and natural-looking materials, earth-tone colors, façade articulation, pitched roofs, and varying roof heights. The incorporation of these design elements is expected to improve the scenic quality rating, as it will replace older strip development with newer development that complements rather than detracts from the naturally appearing landscape. Furthermore, the location of the project site does not obstruct the view of Mt. Tallac, which will remain visible in the far background.

Finding 66.1.4: The Project shall not cause a decrease in the 1982 roadway or shoreline travel route ratings as shown in Tables 13-6 and 13-7, respectively, of the Study Report for the Establishment of Environmental Threshold Carrying Capacities, October 1982. The criteria for rating travel routes as identified in the referenced study report and as further explained in the report entitled A Scenic Analysis of Principal Travel Routes In The Lake Tahoe Region, 1970, shall be used to determine if a project will cause a decrease in the numerical rating. For projects in the shoreland, Section 66.3 shall be used to determine if it will contribute to a decrease in the numerical rating for a shoreline travel route rating.

Rationale: The proposed Project is visible from two roadway travel routes. Roadway Unit #33 – The Strip, and Roadway Unit #45 – Pioneer Trail, North. Both roadway units are designated as urban travel routes, and both are in nonattainment. The TRPA Threshold Dashboard noted that the scenic

quality of urban units is generally affected by visual clutter, dated architecture, a lack of landscaping, and inadequate screening. It also mentioned that urban travel units could benefit from further redevelopment of the built environment.

As described in the rationale for Finding 66.1.3 above, the proposed Project would result in the construction of a new residential building that incorporates all the desired architectural aesthetics required for a project in the TCAP. The Project will also incorporate extensive screening, setback from the travel route to reduce massing, and protect existing views. Thus, the Project is not expected to affect the numerical rating assigned to the travel routes, but would incrementally improve the overall scenic quality and community charater.

Finding 66.1.5: The Project shall not cause a decrease in any numerical subcomponent threshold rating or total threshold rating assigned to a scenic resource identified in the 1993 Lake Tahoe Basin Scenic Resource Evaluation. Prior to approving a project that may potentially affect an identified scenic resource, TRPA shall find that the Project is consistent with applicable recommendations for preserving scenic quality of the affected recreation area or bicycle trail found in the 1993 Lake Tahoe Basin Scenic Resource Evaluation.

Rationale: The Project is not visible from a resource identified in the 1993 Lake Tahoe Basin Scenic Resource Evaluation.

Environmental Analysis:

The permittee has completed an Initial Environmental Checklist (IEC), and City staff has completed the V(g) Findings Checklist to assess the potential environmental impacts of the Project. No significant long-term environmental impacts were identified because the proposed Project complies with the Tourist Core Aera Plan, TRPA Code, and the Regional Plan.

Public Notice:

A public notice was mailed to property owners within 300 feet of the property on March 25, 2025. A notice of the September 17, 2025, Planning Commission Meeting was published in the Tahoe Daily Tribune on April 4, 2025.

Any comments received will be transmitted to the Planning Commission.

Financial Implications:

The City has provided a loan to the developers in the amount not to exceed $564,073 to cover predevelopment costs such as site studies and project design. Providing a loan for predevelopment costs will help keep the project design and development on track with the project timeline and provide leverage for additional funding sources.

Policy Implications:

The redevelopment of the site with a high-density multifamily project aligns with the City Council's strategic priorities to invest in underutilized properties and utilize city surplus land to increase affordable housing options for full-time residents.

Exhibit 4

June 17, 2014 City Staff Report on MOU

UNFINISHED BUSINESS a

City of South Lake Tahoe

"making a positive difference now"

STAFF REPORT
CITY COUNCIL MEETING OF July 15, 2014

TO: Nancy Kerry, City Manager

FROM: Hilary Roverud, Director of Development Services

RE: Discussion and possible direction on a draft memorandum of understanding (MOU) with TRPA regarding delegated permitting authority

RECOMMENDATION:

Hear staff report, ask questions, take public comment, discuss and possibly provide direction.

BACKGROUND:

On June 17, 2014 City staff provided a presentation to City Council describing background information on current MOUs, Area Plan MOUs, and potential implications of entering into new MOUs which delegate TRPA permit review authority to the City.

ISSUE AND DISCUSSION:

TRPA Code Section 13.7.5 requires that an MOU be adopted within six months of the Governing Board's finding of conformity for an Area Plan, with the opportunity for an extension. On May 28, 2014 the TRPA Governing Board approved an extension to the six month requirement for the Tourist Core Area Plan. The extension was requested by the City for two reasons. The first is that it would be more ideal to have one MOU that covers both the Tourist Core and Tahoe Valley area plans because it would provide more consistency in the permit requirements for the public and be more consistently administered by City staff. The second reason is that we needed more time to discuss the details of the delegated permitting especially the expectations for monitoring and reporting, which appear to be more robust than required with past MOUs. The City's extension request is included as Attachment 3. The request included a timeline, committing the City to work with TRPA to develop a draft MOU by August and final adoption by the end of 2014.

City staff has met with TRPA staff several times to begin drafting a new MOU that incorporates the delegated permitting from previous MOUs and new delegated permitting allowed through the adoption of Area Plans. The current draft of the MOU is included as Attachment 1. This draft is preliminary and still requires additional review by both TRPA and City staff prior to recommending adoption.

City staff is providing this draft to the City Planning Commission and City Council for review and feedback before it is presented to the TRPA Regional Plan Implementation Committee in August. City staff intends to bring a final MOU to City Council for consideration of adoption in October. It will then go before the TRPA Governing Board for final approval.

Delegated Authority

The draft MOU includes all of the delegated permitting that the City currently undertakes citywide. It also includes the following delegated permitting in Area Plan areas beyond what is already authorized:

	Currently Delegated Citywide	**New Delegation in Area Plan Areas**		
		Regional Center	Town Center	Not in Center
Residential	All projects that qualify for a CEQA categorical exemption	≤ 100,000 sf	≤ 50,000 sf	≤ 25,000 sf
Commercial	All projects where the amount of new CFA is ≤ 2,500 sf	≤ 80,000 sf	≤ 40,000 sf	≤ 12,500 sf
Tourist Accommodation	Minor additions/ modifications	≤ 80,000 sf	≤ 40,000 sf	≤ 12,500 sf
Public Service	None	≤ 80,000 sf	≤ 40,000 sf	≤ 12,500 sf
Recreation	None	≤ 80,000 sf	≤ 40,000 sf	≤ 12,500 sf
Conservation	None	None	None	None

*All measurements are new building floor area.

The City will also retain delegated permitting for signs, temporary activities, temporary uses, temporary structures, and change of use applications citywide.

Workload

There is potential that additional delegated permitting will result in additional workload for City staff. This workload would be primarily in the Planning and Building divisions and Permit Center of the Development Services Department but would also affect the Engineering Division of the Public Works Department, which also has a key role in development project review related to TRPA Code requirements.

There will be workload associated with projects that would qualify for the delegated permitting in the Area Plans that would not have qualified under the existing MOUs. If there is a significant increase in redevelopment of mid-sized commercial projects, recreation projects, and public service projects this workload would need to be addressed with additional resources. However, the number of projects that would have been in this category in the past few years has not been significant and that level of additional TRPA permit review could be handled by existing staff.

City staff has been able to clarify with TRPA staff that reporting requirements would be limited to raw data, similar to the project data that is already transmitted to TRPA for delegated permitting. TRPA is not requesting data analysis, summaries, or comprehensive tracking. With this clarification, the workload shift to City staff will not be as extensive as expected. However, TRPA agreed to provide a template that includes the data content and format that will be expected, for City staff to review and confirm whether it can be completed with existing staffing levels.

Training

City staff has had extensive discussions with TRPA staff on how we can ensure consistent and accurate application of the TRPA Code basinwide. Both agency staff agree that a greater degree of communication and information sharing would reduce inconsistencies in how different local jurisdictions apply the TRPA Code to projects. This MOU draft puts additional emphasis on the need for ongoing communication and training across TRPA and City staff.

STRATEGIC PLAN AND BUSINESS PLAN RELEVANCE:

Additional delegated permitting authority may result in a more efficient and consistent project application review process for the City community. This increase in efficiency and consistency may facilitate improvements to our built environment, which is a goal of the City Strategic Plan. A renewed MOU would strengthen the City's partnership with TRPA, improving the City's partnership development, also a goal of the Strategic Plan.

FINANCIAL AND/OR POLICY IMPLICATIONS:

Adoption of an MOU may have financial implications described in this report. However, discussion and direction requested at this time would not have financial implications.

ATTACHMENTS:

Attachment 1: Draft MOU

SIGNATURES:

By:

Hilary Roverud, Director of Development Services

Reviewed and Approved by:

Nancy Kerry, City Manager

MEMORANDUM OF UNDERSTANDING
BETWEEN the TAHOE REGIONAL PLANNING AGENCY and CITY OF SOUTH LAKE TAHOE

This Memorandum of Understanding (MOU) is entered between the Tahoe Regional Planning Agency (TRPA) and City of South Lake Tahoe, herein referred to as "Public Entity." TRPA's authority to enter into this MOU with the Public Entity rests in Article VI (m) of the TRPA Compact (Public Law 96-551) and Sections 2.5 and 13.7 of the TRPA Code of Ordinances ("Code"). The Public Entity is authorized to enter into this MOU through its City Council. This MOU shall become part of the TRPA Code under Sections 2.5 and 2.6 upon signing by TRPA and the Public Entity.

PART 1 – GENERAL PROVISIONS

COMMON OBJECTIVES	TRPA and the Public Entity (the "Parties) have a common objective to conserve the resources of the Lake Tahoe Region, achieve and maintain the environmental threshold carrying capacities and enhance the effectiveness of government through the efficient implementation of the TRPA Regional Plan and Area Plans
TERM OF AGREEMENT	This MOU is effective upon the signing of Attachment "A" by the Parties and shall remain in effect until terminated without cause by either party following a 60-day notice in writing. The Public Entity and TRPA will prepare procedural guidelines to implement this MOU.
DEFINITION OF TERMS	Terms in this MOU shall have the same meaning as they do in the TRPA Code.
INTERPRETATION AND SEVERABILITY	The provisions of this MOU are subject to the interpretation and severability provisions of Section 1.6 of the TRPA Code.
DISTRIBUTION OF FUNCTIONS	Activities authorized by TRPA under this MOU are described in Attachment B (Table of Delegated Activities within Area Plans) and Attachment C (Table of Delegated Activities Citywide). Attachments B and C specify the extent to which activities are delegated. All delegated activities shall be reviewed and approved in accordance with the TRPA Regional Plan and Code of Ordinances. The Public Entity will not be delegated review and approval of those activities set forth in Attachments B and C until training has occurred and the Public Entity liaison has indicated in writing the specific date the Public Entity will be responsible for reviewing and approving the delegated activities in accordance with the TRPA Regional Plan and Code of Ordinances. Delegated activities authorized through previous MOUs shall remain as Public

	Entity responsibilities, including reporting procedures already in place, upon signing Attachment A.
EXEMPT AND QUALIFIED EXEMPT ACTIVITIES PERFORMED BY PUBLIC ENTITY	Attachment D (Table of Exempt and Qualified Exempt Activities) describes activities performed by the Public Entity that are exempt from TRPA review and approval and modifies the scope of Exempt and Qualified Exempt activities otherwise allowed in Section 2.3 of the TRPA Code. Activities that are not delegated Exempt or Qualified Exempt are subject to the project review requirements of Section 2.2 of the Code and are subject to TRPA review and approval.
COMMUNICATION	The Parties shall each designate a liaison for direct communication of matters related to this MOU. The Public Entity liaison and the TRPA MOU Coordinator shall meet at least quarterly to review this MOU and to establish policy directives, training needs, and renew communications.
TRAINING	TRPA shall provide initial and ongoing training to the Public Entity regarding the provisions of this MOU.Training shall be provided for matters affecting this MOU, as determined by MOU liaisons, which may include but is not limited to: changes to the TRPA Code, Area Plans, Regional Plan; policy or procedural changes; and training needed for corrective actions or to clarify MOU provisions. TRPA and Public Entity are dedicated to provide mutual support in all matters related to activities described in this MOU and shall respond to requests for support in a timely manner. In order to ensure consistent application of TRPA Code basin wide, TRPA shall provide to Public Entity records of all Code Interpretations made by TRPA staff or Executive Director.
EXAMINATION OF RECORDS	Every record of activity under this MOU shall be open for examination in accordance with Article VI (o) of the TRPA Compact.
PROCEDURES FOR RESOLVING DISPUTES	In the event of a dispute or difference of interpretation regarding the terms or conditions of this MOU, resolution shall first be pursued by the MOU liaisons, and if the liaisons are unable to resolve the dispute then by the executive officers of the Parties. If the executive officers are unable to resolve a dispute, the TRPA Executive Director or City Manager may terminate the MOU or recommend that the matter be heard by the TRPA Governing Board and/or City Council.

EMERGENCIES	The TRPA Rules of Procedure allows the TRPA Executive Director to issue an emergency permit for a situation or circumstance which poses immediate danger to life, property or the environment and demands immediate action in order to comply with the Compact, Regional Plan, Code and/or Rules of Procedure. This MOU does not change the process for issuing an emergency permit.
AMENDMENT	This MOU may be amended from time to time by mutual agreement of the Parties in writing subject to Governing Board and City Council approval. Proposed amendments shall be presented to the liaisons (for approval by their respective agencies) as soon as possible to facilitate timely consideration of proposed amendments.
ASSIGNMENT	None of the authorities, duties or responsibilities set forth in this MOU shall be assigned, transferred or subcontracted to a party other than that named in Attachment A, without written consent by TRPA. TRPA shall maintain a list of pre-qualified consultants that TRPA has agreed may undertake responsibilities set forth in this MOU on behalf of the Public Entity. Requests to transfer or subcontract to parties not on that list shall be made in writing to TRPA and a response provided by TRPA within ten working days.
EXISTING MOU	This MOU incorporates and supercedes existing MOUs between the Public Entity and TRPA.

Part 2 – PERFORMANCE STANDARDS

The following standards shall apply to activities authorized under this MOU. All activities shall be reviewed and approved in accordance with the TRPA Regional Plan, Code of Ordinances and Rules of Procedure. The Parties shall consult with each other regarding any uncertainties about these standards.

ENVIRONMENTAL DOCUMENTATION	Exempt and Qualified Exempt classes of projects are not required to complete a TRPA Initial Environmental Checklist for the activity pursuant to Section 3.3 of the TRPA Code. All other classes of projects shall be reviewed in accordance with the Environmental Documentation requirements of Chapter 3 of the TRPA Code and applicable sections of the Rules of Procedure. Environmental Documents prepared by the Public Entity shall be made available for comment by TRPA upon request.
SPECIAL CONDITIONS	The Public Entity shall administer all standards of the TRPA Regional Plan and Code as applicable to the activities authorized by this MOU in accordance with the provisions of this agreement. The Public Entity shall include special conditions of approval, as needed, to ensure approved projects are consistent with the Compact, Goals and Policies, Code, Rules of Procedure, Community Plans, and Area Plans. Nothing in this MOU shall be deemed to limit the land use regulatory powers of either the Public Entity or TRPA.
FEES AND SECURITIES	Public Entity shall be authorized to collect application and mitigation fees, security deposits, and other designated fees in accordance with fee schedules to be provided to Public Entity by TRPA. Such fee schedules shall be sufficient in detail to provide specific information concerning fee calculation to assist Public Entity in performing fee collection activities. Furthermore, Public Entity shall be authorized to retain 100% percentage of all application fees collected to offset Public Entitiy's costs of administering the provisions of this MOU. Public Entity agrees to provide one-tenth of one percent (1/1000) of each building permit valuation, for projects requiring a TRPA permit, to TRPA to be used for monitoring and reporting where permits are delegated. Public Entity shall transmit TRPA fees collected by the Public Entity to TRPA on a quarterly basis (within 30 days of the end of the quarter).

FINDINGS

The Public Entity agrees to make all findings required by the Compact, Regional Plan, Area Plan and Code for project, approval, and inclusions of special conditions not inconsistent with the Area Plan. The Public Entity shall keep, as part of their permanent permit files records, all written findings required in the Compact, Regional Plan, Area Plan and Code for the activities approved under this MOU.

MONITORING

On a quarterly basis, the Public Entity shall send to TRPA copies of all building permits issued. Such building permits shall be in a format approved by TRPA and shall contain and make clear the necessary development information TRPA needs to measure compliance with the terms of the Regional Plan, such as additional land coverage, commercial floor area, residential units, or tourist accommodation units (TAUs). In maintaining permit files, Public Entity shall utilize hard copy or electronic tracking forms provided by TRPA to record all inspections, verifications, land coverage and commodity information and other project review activities. The MOU Procedural Guidelines shall include permit information reporting requirements.

A data report outlining permit activities, including transfers of development, shall include the type of permits issued as well as the location of BMPs implemented through permits. The data report shall be made available to the public. Public Entity shall participate in the annual accounting and reporting of Environmental Improvement Program (EIP) Performance Measures resulting from City efforts to implement the EIP. Public Entity shall also transmit a copy of the NPDES Annual Report (including Pollutant Load Reduction Report) each year when submitted to the Lahontan Water Quality Control Board.

RECORD KEEPING AND REPORTING

The Public Entity shall adhere to all provisions contained within TRPA Code Chapter 6, relating to account file data (TRPA Code Sections 6.5, 6.6 and 6.7), including coverage, allocations, and any other applicable procedures. All project accounting shall be completed by Public Entity and transmitted to TRPA to be included in its permanent accounting and tracking records. Public Entity shall submit completed tracking forms to TRPA on a quarterly basis.

The Public Entity shall also report Qualified Exempt (QE) activities undertaken by Public Entity to the TRPA MOU Liaison on a TRPA reporting form at least three business days prior to

commencement of activity in order for TRPA to determine the activity is consistent with the requirements of the MOU. The Public entity shall keep records of Exempt and Qualified Exempt activities undertaken by Public Entity pursuant to this MOU for a period of 12 months following the cessation of the activity.

SITE INSPECTIONS

Public Entity shall perform site inspections to ensure that the projects and activities permitted under this MOU are constructed in accordance with the approved project, including installation of BMP's. The Public Entity shall have authority and responsibility to take any and all administrative steps to enforce the standards of the TRPA Code as authorized by this MOU, including the processing of Code violations involving unpermitted activities. TRPA will enforce BMPs associated with permits issued by TRPA and for BMP retrofits not associated with an adopted TMDL Pollutant Load Reduction Plan and Public Entity will enforce BMPs associated with TRPA permits issued by the Public Entity and for properties identified in their adopted TMDL Pollutant Load Reduction Plan(s).

VIOLATIONS

Upon discovery of a TRPA Code violation associated with a permit issued by TRPA , Public Entity shall immediately notify the designated TRPA Code Administration staff in writingTRPA may also perform inspections and determine if a violation exists. Settlements of TRPA Code violations involving civil penalties must be approved by TRPA.

Upon discover of a TRPA Code violation associated with a permit issued by Public Entity, the Public Entity shall have authority and responsibility to take any and all administrative steps to enforce the standards of the TRPA Code as authorized by this MOU, including the processing of Code violations involving unpermitted activities. If a TRPA Code violation cannot be resolved by the Public Entity on-site, the Public Entity shall contact TRPA to institute TRPA's formal notice of violation procedure.

Upon final inspection, if the project has been constructed in accordance with the permit, Public Entity shall be authorized to release the security deposit to the project applicant.

UNUSUAL CIRCUMSTANCES

If the TRPA Executive Director determines that, because of unusual circumstances or failure to comply with this MOU, any exempt activity set forth herein may have a substantial effect on the land, air, water, space, or any other natural resource of the region, the MOU shall be amended to specify that the activity shall be considered a project requiring TRPA review.

APPEAL ALLOWED	Final decisions on projects delegated to a Public Entity may be appealed to the TRPA. An appeal may only be filed by an aggrieved person as defined in Article VI(j)(3) of the Compact. Decisions by the Public Entity under independent local, state, or federal law are not the subject of this appeal process. Appeals shall meet the requirements of 13.9 (Appeals) of the Code of Ordinances.
NOTICE	The Public Entity shall give notice to TRPA of all projects delegated to the Public Entity that require notice to affected property owners pursuant to Article 12 of the TRPA Rules of Procedure, and shall give notice to TRPA of all applications to amend a policy or ordinance that is part of an Area Plan. The notice shall be sent pursuant to Public Entity notification procedures; however, in all cases the notice shall be sent no less than 10 days prior to the hearing or action in order to provide TRPA with adequate time to review and comment, if desired, on the project.
INCORPORATION OF REGIONAL PLAN AMENDMENTS INTO AREA PLAN	If TRPA approves an amendment to the Regional Plan that would also require amendment of an Area Plan to maintain conformity, the Public Entity has one year to amend the Area Plan to demonstrate conformity with the TRPA amendment. If the Governing Board finds that the Public Entity failed to demonstrate conformity with the TRPA amendment following the one-year deadline, then the Board will identify the policies and/or zoning provisions in the Area Plan that are inconsistent and assume lead agency authority under the Regional Plan to amend those policies and provisions. In the event this occurs the amendments would only be in effect as part of the Regional Plan and not Public Entity regulation.

ATTACHMENT "A"

AREA PLAN
MEMOANDUM OF UNDERSTANDING
BETWEEN THE TAHOE REGIONAL PLANNING AGENCY AND
CITY OF SOUTH LAKE TAHOE

TRPA's authority to enter into this Memorandum of Understanding (MOU) with local entities rests in Article VI (m) of the TRPA Compact (Public Law 96-551) and Sections 2.5 and 2.6 of the TRPA Code of Ordinances. The authority of the Public Entity to enter into this MOU rests in the City Council.

This MOU shall become effective when signed by the parties listed below.

TAHOE REGIONAL PLANNING AGENCY

Date: _____ _____

By: Joanne Marchetta
Executive Director

CITY OF SOUTH LAKE TAHOE

Date: _____ _____

By: Hal Cole, Mayor

ATTACHMENT B
TABLE OF DELEGATED PERMITTING AUTHORITY WITHIN AREA PLANS

Note: The activities described in this table are delegated to the Public Entity within Area Plans and shall be reviewed and approved in accordance with the TRPA Regional Plan and the Code. The activities do not require TRPA review and approval except as required by this Memorandum of Understanding.

Line No.	Activity Level	Activity
1		Residential Development within a Regional Center which does not exceed 100,000 square feet (of new floor area)
2		Residential Development within a Town Center which does not exceed 50,000 square feet (of new floor area)
3		Residential Development outside of a Town or Regional Center which does not exceed 25,000 square feet (of new floor area)
4		Commercial, Tourist Accommodation, Public Service, and Recreation Development within a Regional Center which does not exceed 80,000 square feet (of new floor area)
5		Commercial, Tourist Accommodation, Public Service, and Recreation Development within a Town Center which does not exceed 40,000 square feet (of new floor area)
6		Commercial, Tourist Accommodation, Public Service, and Recreation Development outside of a Town or Regional Center which does not exceed 12,500 square feet (of new floor area)

Projects and matters that meet one of the following criteria and that are also identified in Section 2.2.2 of the Code as requiring approval by the Governing Board or Hearings Officer shall be reviewed by TRPA:

A. All development within the High-Density Tourist District;
B. All development within the Shorezone of Lake Tahoe;
C. All development within the Conservation District;
D. All development within the Backcountry District;
E. All development within the Resort Recreation designation; and
F. All development meeting the criteria in the following table:

	Regional Center	Town Center	Not in Center
Residential	≥100,000 sq. ft.	≥ 50,000 sq. ft.	≥ 25,000 sq. ft.
Other	≥ 80,000 sq. ft.	≥ 40,000 sq. ft.	≥ 12,500 sq. ft.

(All measurements are new building floor area.)

ATTACHMENT C
TABLE OF DELEGATED PERMITTING AUTHORITY CITYWIDE

Note: The activities described in this table are delegated to the Public Entity and shall be reviewed and approved in accordance with the TRPA Regional Plan and the Code. The activities do not require TRPA review and approval except as required by this Memorandum of Understanding.

Line No.	Activity Level	Activity
1		Temporary Activities
2		New/Additions/Modifications to Residential Development qualifying for a CEQA categorical exemption and not requiring Governing Board approval[1]
3		Commercial Development where new floor area does not exceed 2,500 square feet[2]
4		Minor Additions/Modifications to Tourist Accommodation Uses[2]
5		Temporary Uses[2]
6		Temporary Structures[2]
7		Commercial Changes in Operation[2]
8		Signs

1. As long as the applicable TRPA regulations are being complied with and enforced, new/additions/modifications to single family residential and multi-family residential less than four units shall be deemed a qualified exempt activity under TRPA regulations.
2. Review of these projects shall be limited to those projects identified in Chapter 2 of the TRPA Code, as amended, as staff or Hearings Officer level. Where the review level is identified as Hearings Officer, all procedures identified in the Hearings Officer Procedural Guidelines shall be used. Where feasible joint TRPA Hearings Officer/City Zoning administrator or City Planning Commission public hearings shall be held.

Exhibit 5

July 15, 2015 City Staff Report for MOU Adoption

UNFINISHED BUSINESS a

City of South Lake Tahoe

"making a positive difference now"

STAFF REPORT
CITY COUNCIL MEETING OF July 15, 2014

TO: Nancy Kerry, City Manager

FROM: Hilary Roverud, Director of Development Services

RE: Discussion and possible direction on a draft memorandum of understanding (MOU) with TRPA regarding delegated permitting authority

RECOMMENDATION:

Hear staff report, ask questions, take public comment, discuss and possibly provide direction.

BACKGROUND:

On June 17, 2014 City staff provided a presentation to City Council describing background information on current MOUs, Area Plan MOUs, and potential implications of entering into new MOUs which delegate TRPA permit review authority to the City.

ISSUE AND DISCUSSION:

TRPA Code Section 13.7.5 requires that an MOU be adopted within six months of the Governing Board's finding of conformity for an Area Plan, with the opportunity for an extension. On May 28, 2014 the TRPA Governing Board approved an extension to the six month requirement for the Tourist Core Area Plan. The extension was requested by the City for two reasons. The first is that it would be more ideal to have one MOU that covers both the Tourist Core and Tahoe Valley area plans because it would provide more consistency in the permit requirements for the public and be more consistently administered by City staff. The second reason is that we needed more time to discuss the details of the delegated permitting especially the expectations for monitoring and reporting, which appear to be more robust than required with past MOUs. The City's extension request is included as Attachment 3. The request included a timeline, committing the City to work with TRPA to develop a draft MOU by August and final adoption by the end of 2014.

City staff has met with TRPA staff several times to begin drafting a new MOU that incorporates the delegated permitting from previous MOUs and new delegated permitting allowed through the adoption of Area Plans. The current draft of the MOU is included as Attachment 1. This draft is preliminary and still requires additional review by both TRPA and City staff prior to recommending adoption.

City staff is providing this draft to the City Planning Commission and City Council for review and feedback before it is presented to the TRPA Regional Plan Implementation Committee in August. City staff intends to bring a final MOU to City Council for consideration of adoption in October. It will then go before the TRPA Governing Board for final approval.

Delegated Authority

The draft MOU includes all of the delegated permitting that the City currently undertakes citywide. It also includes the following delegated permitting in Area Plan areas beyond what is already authorized:

	Currently Delegated Citywide	**New Delegation in Area Plan Areas**		
		Regional Center	Town Center	Not in Center
Residential	All projects that qualify for a CEQA categorical exemption	≤ 100,000 sf	≤ 50,000 sf	≤ 25,000 sf
Commercial	All projects where the amount of new CFA is ≤ 2,500 sf	≤ 80,000 sf	≤ 40,000 sf	≤ 12,500 sf
Tourist Accommodation	Minor additions/ modifications	≤ 80,000 sf	≤ 40,000 sf	≤ 12,500 sf
Public Service	None	≤ 80,000 sf	≤ 40,000 sf	≤ 12,500 sf
Recreation	None	≤ 80,000 sf	≤ 40,000 sf	≤ 12,500 sf
Conservation	None	None	None	None

*All measurements are new building floor area.

The City will also retain delegated permitting for signs, temporary activities, temporary uses, temporary structures, and change of use applications citywide.

Workload

There is potential that additional delegated permitting will result in additional workload for City staff. This workload would be primarily in the Planning and Building divisions and Permit Center of the Development Services Department but would also affect the Engineering Division of the Public Works Department, which also has a key role in development project review related to TRPA Code requirements.

There will be workload associated with projects that would qualify for the delegated permitting in the Area Plans that would not have qualified under the existing MOUs. If there is a significant increase in redevelopment of mid-sized commercial projects, recreation projects, and public service projects this workload would need to be addressed with additional resources. However, the number of projects that would have been in this category in the past few years has not been significant and that level of additional TRPA permit review could be handled by existing staff.

City staff has been able to clarify with TRPA staff that reporting requirements would be limited to raw data, similar to the project data that is already transmitted to TRPA for delegated permitting. TRPA is not requesting data analysis, summaries, or comprehensive tracking. With this clarification, the workload shift to City staff will not be as extensive as expected. However, TRPA agreed to provide a template that includes the data content and format that will be expected, for City staff to review and confirm whether it can be completed with existing staffing levels.

Training

City staff has had extensive discussions with TRPA staff on how we can ensure consistent and accurate application of the TRPA Code basinwide. Both agency staff agree that a greater degree of communication and information sharing would reduce inconsistencies in how different local jurisdictions apply the TRPA Code to projects. This MOU draft puts additional emphasis on the need for ongoing communication and training across TRPA and City staff.

STRATEGIC PLAN AND BUSINESS PLAN RELEVANCE:

Additional delegated permitting authority may result in a more efficient and consistent project application review process for the City community. This increase in efficiency and consistency may facilitate improvements to our built environment, which is a goal of the City Strategic Plan. A renewed MOU would strengthen the City's partnership with TRPA, improving the City's partnership development, also a goal of the Strategic Plan.

FINANCIAL AND/OR POLICY IMPLICATIONS:

Adoption of an MOU may have financial implications described in this report. However, discussion and direction requested at this time would not have financial implications.

ATTACHMENTS:

Attachment 1: Draft MOU

SIGNATURES:

By:

Hilary Roverud, Director of Development Services

Reviewed and Approved by:

Nancy Kerry, City Manager

MEMORANDUM OF UNDERSTANDING
BETWEEN the TAHOE REGIONAL PLANNING AGENCY and CITY OF SOUTH LAKE TAHOE

This Memorandum of Understanding (MOU) is entered between the Tahoe Regional Planning Agency (TRPA) and City of South Lake Tahoe, herein referred to as "Public Entity." TRPA's authority to enter into this MOU with the Public Entity rests in Article VI (m) of the TRPA Compact (Public Law 96-551) and Sections 2.5 and 13.7 of the TRPA Code of Ordinances ("Code"). The Public Entity is authorized to enter into this MOU through its City Council. This MOU shall become part of the TRPA Code under Sections 2.5 and 2.6 upon signing by TRPA and the Public Entity.

PART 1 – GENERAL PROVISIONS

COMMON OBJECTIVES	TRPA and the Public Entity (the "Parties) have a common objective to conserve the resources of the Lake Tahoe Region, achieve and maintain the environmental threshold carrying capacities and enhance the effectiveness of government through the efficient implementation of the TRPA Regional Plan and Area Plans
TERM OF AGREEMENT	This MOU is effective upon the signing of Attachment "A" by the Parties and shall remain in effect until terminated without cause by either party following a 60-day notice in writing. The Public Entity and TRPA will prepare procedural guidelines to implement this MOU.
DEFINITION OF TERMS	Terms in this MOU shall have the same meaning as they do in the TRPA Code.
INTERPRETATION AND SEVERABILITY	The provisions of this MOU are subject to the interpretation and severability provisions of Section 1.6 of the TRPA Code.
DISTRIBUTION OF FUNCTIONS	Activities authorized by TRPA under this MOU are described in Attachment B (Table of Delegated Activities within Area Plans) and Attachment C (Table of Delegated Activities Citywide). Attachments B and C specify the extent to which activities are delegated. All delegated activities shall be reviewed and approved in accordance with the TRPA Regional Plan and Code of Ordinances. The Public Entity will not be delegated review and approval of those activities set forth in Attachments B and C until training has occurred and the Public Entity liaison has indicated in writing the specific date the Public Entity will be responsible for reviewing and approving the delegated activities in accordance with the TRPA Regional Plan and Code of Ordinances. Delegated activities authorized through previous MOUs shall remain as Public

	Entity responsibilities, including reporting procedures already in place, upon signing Attachment A.
EXEMPT AND QUALIFIED EXEMPT ACTIVITIES PERFORMED BY PUBLIC ENTITY	Attachment D (Table of Exempt and Qualified Exempt Activities) describes activities performed by the Public Entity that are exempt from TRPA review and approval and modifies the scope of Exempt and Qualified Exempt activities otherwise allowed in Section 2.3 of the TRPA Code. Activities that are not delegated Exempt or Qualified Exempt are subject to the project review requirements of Section 2.2 of the Code and are subject to TRPA review and approval.
COMMUNICATION	The Parties shall each designate a liaison for direct communication of matters related to this MOU. The Public Entity liaison and the TRPA MOU Coordinator shall meet at least quarterly to review this MOU and to establish policy directives, training needs, and renew communications.
TRAINING	TRPA shall provide initial and ongoing training to the Public Entity regarding the provisions of this MOU.Training shall be provided for matters affecting this MOU, as determined by MOU liaisons, which may include but is not limited to: changes to the TRPA Code, Area Plans, Regional Plan; policy or procedural changes; and training needed for corrective actions or to clarify MOU provisions. TRPA and Public Entity are dedicated to provide mutual support in all matters related to activities described in this MOU and shall respond to requests for support in a timely manner. In order to ensure consistent application of TRPA Code basin wide, TRPA shall provide to Public Entity records of all Code Interpretations made by TRPA staff or Executive Director.
EXAMINATION OF RECORDS	Every record of activity under this MOU shall be open for examination in accordance with Article VI (o) of the TRPA Compact.
PROCEDURES FOR RESOLVING DISPUTES	In the event of a dispute or difference of interpretation regarding the terms or conditions of this MOU, resolution shall first be pursued by the MOU liaisons, and if the liaisons are unable to resolve the dispute then by the executive officers of the Parties. If the executive officers are unable to resolve a dispute, the TRPA Executive Director or City Manager may terminate the MOU or recommend that the matter be heard by the TRPA Governing Board and/or City Council.

EMERGENCIES	The TRPA Rules of Procedure allows the TRPA Executive Director to issue an emergency permit for a situation or circumstance which poses immediate danger to life, property or the environment and demands immediate action in order to comply with the Compact, Regional Plan, Code and/or Rules of Procedure. This MOU does not change the process for issuing an emergency permit.
AMENDMENT	This MOU may be amended from time to time by mutual agreement of the Parties in writing subject to Governing Board and City Council approval. Proposed amendments shall be presented to the liaisons (for approval by their respective agencies) as soon as possible to facilitate timely consideration of proposed amendments.
ASSIGNMENT	None of the authorities, duties or responsibilities set forth in this MOU shall be assigned, transferred or subcontracted to a party other than that named in Attachment A, without written consent by TRPA. TRPA shall maintain a list of pre-qualified consultants that TRPA has agreed may undertake responsibilities set forth in this MOU on behalf of the Public Entity. Requests to transfer or subcontract to parties not on that list shall be made in writing to TRPA and a response provided by TRPA within ten working days.
EXISTING MOU	This MOU incorporates and supercedes existing MOUs between the Public Entity and TRPA.

Part 2 – PERFORMANCE STANDARDS

The following standards shall apply to activities authorized under this MOU. All activities shall be reviewed and approved in accordance with the TRPA Regional Plan, Code of Ordinances and Rules of Procedure. The Parties shall consult with each other regarding any uncertainties about these standards.

ENVIRONMENTAL DOCUMENTATION	Exempt and Qualified Exempt classes of projects are not required to complete a TRPA Initial Environmental Checklist for the activity pursuant to Section 3.3 of the TRPA Code. All other classes of projects shall be reviewed in accordance with the Environmental Documentation requirements of Chapter 3 of the TRPA Code and applicable sections of the Rules of Procedure. Environmental Documents prepared by the Public Entity shall be made available for comment by TRPA upon request.
SPECIAL CONDITIONS	The Public Entity shall administer all standards of the TRPA Regional Plan and Code as applicable to the activities authorized by this MOU in accordance with the provisions of this agreement. The Public Entity shall include special conditions of approval, as needed, to ensure approved projects are consistent with the Compact, Goals and Policies, Code, Rules of Procedure, Community Plans, and Area Plans. Nothing in this MOU shall be deemed to limit the land use regulatory powers of either the Public Entity or TRPA.
FEES AND SECURITIES	Public Entity shall be authorized to collect application and mitigation fees, security deposits, and other designated fees in accordance with fee schedules to be provided to Public Entity by TRPA. Such fee schedules shall be sufficient in detail to provide specific information concerning fee calculation to assist Public Entity in performing fee collection activities. Furthermore, Public Entity shall be authorized to retain 100% percentage of all application fees collected to offset Public Entitiy's costs of administering the provisions of this MOU. Public Entity agrees to provide one-tenth of one percent (1/1000) of each building permit valuation, for projects requiring a TRPA permit, to TRPA to be used for monitoring and reporting where permits are delegated. Public Entity shall transmit TRPA fees collected by the Public Entity to TRPA on a quarterly basis (within 30 days of the end of the quarter).

FINDINGS

The Public Entity agrees to make all findings required by the Compact, Regional Plan, Area Plan and Code for project, approval, and inclusions of special conditions not inconsistent with the Area Plan. The Public Entity shall keep, as part of their permanent permit files records, all written findings required in the Compact, Regional Plan, Area Plan and Code for the activities approved under this MOU.

MONITORING

On a quarterly basis, the Public Entity shall send to TRPA copies of all building permits issued. Such building permits shall be in a format approved by TRPA and shall contain and make clear the necessary development information TRPA needs to measure compliance with the terms of the Regional Plan, such as additional land coverage, commercial floor area, residential units, or tourist accommodation units (TAUs). In maintaining permit files, Public Entity shall utilize hard copy or electronic tracking forms provided by TRPA to record all inspections, verifications, land coverage and commodity information and other project review activities. The MOU Procedural Guidelines shall include permit information reporting requirements.

A data report outlining permit activities, including transfers of development, shall include the type of permits issued as well as the location of BMPs implemented through permits. The data report shall be made available to the public. Public Entity shall participate in the annual accounting and reporting of Environmental Improvement Program (EIP) Performance Measures resulting from City efforts to implement the EIP. Public Entity shall also transmit a copy of the NPDES Annual Report (including Pollutant Load Reduction Report) each year when submitted to the Lahontan Water Quality Control Board.

RECORD KEEPING AND REPORTING

The Public Entity shall adhere to all provisions contained within TRPA Code Chapter 6, relating to account file data (TRPA Code Sections 6.5, 6.6 and 6.7), including coverage, allocations, and any other applicable procedures. All project accounting shall be completed by Public Entity and transmitted to TRPA to be included in its permanent accounting and tracking records. Public Entity shall submit completed tracking forms to TRPA on a quarterly basis.

The Public Entity shall also report Qualified Exempt (QE) activities undertaken by Public Entity to the TRPA MOU Liaison on a TRPA reporting form at least three business days prior to

commencement of activity in order for TRPA to determine the activity is consistent with the requirements of the MOU. The Public entity shall keep records of Exempt and Qualified Exempt activities undertaken by Public Entity pursuant to this MOU for a period of 12 months following the cessation of the activity.

SITE INSPECTIONS

Public Entity shall perform site inspections to ensure that the projects and activities permitted under this MOU are constructed in accordance with the approved project, including installation of BMP's. The Public Entity shall have authority and responsibility to take any and all administrative steps to enforce the standards of the TRPA Code as authorized by this MOU, including the processing of Code violations involving unpermitted activities. TRPA will enforce BMPs associated with permits issued by TRPA and for BMP retrofits not associated with an adopted TMDL Pollutant Load Reduction Plan and Public Entity will enforce BMPs associated with TRPA permits issued by the Public Entity and for properties identified in their adopted TMDL Pollutant Load Reduction Plan(s).

VIOLATIONS

Upon discovery of a TRPA Code violation associated with a permit issued by TRPA , Public Entity shall immediately notify the designated TRPA Code Administration staff in writingTRPA may also perform inspections and determine if a violation exists. Settlements of TRPA Code violations involving civil penalties must be approved by TRPA.

Upon discover of a TRPA Code violation associated with a permit issued by Public Entity, the Public Entity shall have authority and responsibility to take any and all administrative steps to enforce the standards of the TRPA Code as authorized by this MOU, including the processing of Code violations involving unpermitted activities. If a TRPA Code violation cannot be resolved by the Public Entity on-site, the Public Entity shall contact TRPA to institute TRPA's formal notice of violation procedure.

Upon final inspection, if the project has been constructed in accordance with the permit, Public Entity shall be authorized to release the security deposit to the project applicant.

UNUSUAL CIRCUMSTANCES

If the TRPA Executive Director determines that, because of unusual circumstances or failure to comply with this MOU, any exempt activity set forth herein may have a substantial effect on the land, air, water, space, or any other natural resource of the region, the MOU shall be amended to specify that the activity shall be considered a project requiring TRPA review.

APPEAL ALLOWED	Final decisions on projects delegated to a Public Entity may be appealed to the TRPA. An appeal may only be filed by an aggrieved person as defined in Article VI(j)(3) of the Compact. Decisions by the Public Entity under independent local, state, or federal law are not the subject of this appeal process. Appeals shall meet the requirements of 13.9 (Appeals) of the Code of Ordinances.
NOTICE	The Public Entity shall give notice to TRPA of all projects delegated to the Public Entity that require notice to affected property owners pursuant to Article 12 of the TRPA Rules of Procedure, and shall give notice to TRPA of all applications to amend a policy or ordinance that is part of an Area Plan. The notice shall be sent pursuant to Public Entity notification procedures; however, in all cases the notice shall be sent no less than 10 days prior to the hearing or action in order to provide TRPA with adequate time to review and comment, if desired, on the project.
INCORPORATION OF REGIONAL PLAN AMENDMENTS INTO AREA PLAN	If TRPA approves an amendment to the Regional Plan that would also require amendment of an Area Plan to maintain conformity, the Public Entity has one year to amend the Area Plan to demonstrate conformity with the TRPA amendment. If the Governing Board finds that the Public Entity failed to demonstrate conformity with the TRPA amendment following the one-year deadline, then the Board will identify the policies and/or zoning provisions in the Area Plan that are inconsistent and assume lead agency authority under the Regional Plan to amend those policies and provisions. In the event this occurs the amendments would only be in effect as part of the Regional Plan and not Public Entity regulation.

ATTACHMENT "A"

AREA PLAN
MEMOANDUM OF UNDERSTANDING
BETWEEN THE TAHOE REGIONAL PLANNING AGENCY AND
CITY OF SOUTH LAKE TAHOE

TRPA's authority to enter into this Memorandum of Understanding (MOU) with local entities rests in Article VI (m) of the TRPA Compact (Public Law 96-551) and Sections 2.5 and 2.6 of the TRPA Code of Ordinances. The authority of the Public Entity to enter into this MOU rests in the City Council.

This MOU shall become effective when signed by the parties listed below.

TAHOE REGIONAL PLANNING AGENCY

Date: _____ _____

By: Joanne Marchetta
Executive Director

CITY OF SOUTH LAKE TAHOE

Date: _____ _____

By: Hal Cole, Mayor

ATTACHMENT B
TABLE OF DELEGATED PERMITTING AUTHORITY WITHIN AREA PLANS

Note: The activities described in this table are delegated to the Public Entity within Area Plans and shall be reviewed and approved in accordance with the TRPA Regional Plan and the Code. The activities do not require TRPA review and approval except as required by this Memorandum of Understanding.

Line No.	Activity Level	Activity
1		Residential Development within a Regional Center which does not exceed 100,000 square feet (of new floor area)
2		Residential Development within a Town Center which does not exceed 50,000 square feet (of new floor area)
3		Residential Development outside of a Town or Regional Center which does not exceed 25,000 square feet (of new floor area)
4		Commercial, Tourist Accommodation, Public Service, and Recreation Development within a Regional Center which does not exceed 80,000 square feet (of new floor area)
5		Commercial, Tourist Accommodation, Public Service, and Recreation Development within a Town Center which does not exceed 40,000 square feet (of new floor area)
6		Commercial, Tourist Accommodation, Public Service, and Recreation Development outside of a Town or Regional Center which does not exceed 12,500 square feet (of new floor area)

Projects and matters that meet one of the following criteria and that are also identified in Section 2.2.2 of the Code as requiring approval by the Governing Board or Hearings Officer shall be reviewed by TRPA:

A. All development within the High-Density Tourist District;
B. All development within the Shorezone of Lake Tahoe;
C. All development within the Conservation District;
D. All development within the Backcountry District;
E. All development within the Resort Recreation designation; and
F. All development meeting the criteria in the following table:

	Regional Center	Town Center	Not in Center
Residential	≥100,000 sq. ft.	≥ 50,000 sq. ft.	≥ 25,000 sq. ft.
Other	≥ 80,000 sq. ft.	≥ 40,000 sq. ft.	≥ 12,500 sq. ft.

(All measurements are new building floor area.)

ATTACHMENT C
TABLE OF DELEGATED PERMITTING AUTHORITY CITYWIDE

Note: The activities described in this table are delegated to the Public Entity and shall be reviewed and approved in accordance with the TRPA Regional Plan and the Code. The activities do not require TRPA review and approval except as required by this Memorandum of Understanding.

Line No.	Activity Level	Activity
1		Temporary Activities
2		New/Additions/Modifications to Residential Development qualifying for a CEQA categorical exemption and not requiring Governing Board approval[1]
3		Commercial Development where new floor area does not exceed 2,500 square feet[2]
4		Minor Additions/Modifications to Tourist Accommodation Uses[2]
5		Temporary Uses[2]
6		Temporary Structures[2]
7		Commercial Changes in Operation[2]
8		Signs

1. As long as the applicable TRPA regulations are being complied with and enforced, new/additions/modifications to single family residential and multi-family residential less than four units shall be deemed a qualified exempt activity under TRPA regulations.
2. Review of these projects shall be limited to those projects identified in Chapter 2 of the TRPA Code, as amended, as staff or Hearings Officer level. Where the review level is identified as Hearings Officer, all procedures identified in the Hearings Officer Procedural Guidelines shall be used. Where feasible joint TRPA Hearings Officer/City Zoning administrator or City Planning Commission public hearings shall be held.

Exhibit 6

July 15, 2015 City Council Meeting Minutes

CITY COUNCIL
SOUTH TAHOE REDEVELOPMENT SUCCESSOR AGENCY
MEETING MINUTES
TUESDAY, JULY 15, 2014, 9:00 A.M.
CITY COUNCIL CHAMBERS, 1901 AIRPORT ROAD
SOUTH LAKE TAHOE, CALIFORNIA 96150

8:00 A.M. – CLOSED SESSION

NOTE: The Meeting Minutes represent a summary of the public communications, City Commission reports, staff reports, public hearings, Councilmember reports, and actions taken at the July 15, 2014, meeting of the City Council and the STRSA Board of Directors. Complete Councilmember and Board discussions on Regular Session meeting items can be viewed on the City's website at http://www.cityofslt.us *and details and public submittals on items can be reviewed in the staff reports contained in the agenda packet which is kept on file in the City Clerk's department as permanent record or on the City's website at* http://www.cityofslt.us

CALL TO ORDER:

At 8:00 a.m., Mayor Cole called the meeting to order.

ROLL CALL:

Present were Mayor Cole and Councilmembers Conner, Davis and Laine. Also present were City Manager Kerry, City Attorney Watson and City Clerk Alessi. Councilmember Swanson arrived at 8:12 a.m.

Mayor Cole asked if anyone from the public wished to speak on the Closed Session Agenda Item (a). No one appeared in order to be heard.

CLOSED SESSION:

Mayor Cole convened the Closed Session at 8:01 a.m.

(a) CONFERENCE WITH LABOR NEGOTIATIONS:

Pursuant to Government Code Section 54957.6
City Designated Representatives: Nancy Kerry, City Manager; Mark Carlson, Administrative Services Director; and Patrick Clark, Negotiator

Employee Organizations:

Stationary Engineers Local 39 (General and Public Works)
South Lake Tahoe Administrative and Confidential Employees' Association
South Lake Tahoe Firemen's Association
South Lake Tahoe Police Association
South Lake Tahoe Police Officers Association
South Lake Tahoe Police Supervisors' Association

City Manager Kerry, Administrative Services Director Carlson, and Negotiator Clark briefed the Council on these labor negotiations. **1065**

ADJOURNMENT OF CLOSED SESSION:

Mayor Cole Adjourned this portion of the Closed Session at 8:59 a.m.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE TO THE FLAG:

At 9:00 a.m., Mayor Cole reconvened the open session meeting of the City Council; as Board President he convened the South Tahoe Redevelopment Successor Agency (STRSA) Board of Directors meeting; and he led the pledge of allegiance to the flag.

OPEN SESSION ROLL CALL:

Present in both City and STRSA capacities were Mayor/Agency Board President Cole and Councilmembers/Agency Board of Directors Conner, Davis, Laine and Swanson. Also present were City Manager/Agency Executive Director Kerry, City Attorney/Agency Counsel Watson, and City Clerk/Agency Secretary Alessi.

Mayor Cole reported that the Council had met in Closed Session prior to the Regular Meeting and announced that "NO REPORTABLE ACTION" was taken on Closed Session Agenda Item (a). He indicated that the Council at the conclusion of the Regular Session would reconvene the Closed Session and discuss Item (b).

OPENING STATEMENT BY THE CITY CLERK REGARDING MEETING PROCEDURES AND CONDUCT, AND THE SUBMISSION OF WRITTEN COMMENTS FOR THE RECORD:

City Clerk Alessi read an opening statement into the record informing those present of certain procedural and conduct protocols along with the disposition of written comments for the record submitted to the City Council.

PUBLIC COMMUNICATIONS:

Mayor Cole asked if anyone in the audience wished to speak on any non-agenda items.

1. Ed Mosur, local resident, stated that Consent Agenda Item No. 4 *(Resolution regarding Change Order for General Aviation Ramp Reconstruction and the temporary loan of funds from the General Fund to be repaid upon receipt of forthcoming FAA funds)* contained in the July 1, 2014, City Council Meeting Minutes had said that "Mosur provided criticisms of the airport". He said as he recalled he had not criticized the airport but had instead criticized that nothing had been done to the streets in his neighborhood for 30-years and that he objected to additional money being spent at the airport.

Mosur referenced New Business Item (a) *(Review of the Ban on Plastic Single-use Carry-out Bags, Ordinance No. 1061)* contained in the June 17, 2014, City Council Meeting Minutes which said that "[Mosur]...remarked on cigarette butts on the ground and at beaches and said that a ban on smoking should be passed." He stated that he'd said that the City even had to pass a ban on smoking at Lakeview Commons due to all the cigarette butts and that he'd not asked for a no-smoking ban City-wide as in the minutes.

Mosur referenced a Harrison Avenue Project contract awarded to Cardno ENTRIX and his objection to Steven Peck and said that he and Councilmember Laine had conducted a telephone conversation on that matter prior to the meeting when that contract was awarded. He said when Laine discussed their telephone conversation at the Council meeting that her comment was that "We agreed to disagree" and Mosur said that "I disagree with that and what I did was I laid out the truth and the facts to you and asked you if you were aware of some things".

Councilmember Laine clarified for the record that those were her comments at the Council meeting and that the Meeting Minutes reflected what was stated at the meeting. She said that the Minutes were accurate with regard to what she'd said whether Mr. Mosur and she agreed or disagreed on Cardno ENTRIX.

PUBLIC HEARINGS – Item (b): (Continued)

City Clerk Alessi indicated that ten (10) ballots had been dispatched and that six (6) ballots had been returned. She stated that she'd performed the ballot tabulation and that all six (6) returned ballots were in favor which thus constituted a supermajority.

Mayor Cole remarked that per the law the ballot results made it possible for the Council to adopt a Resolution.

Mayor Cole read aloud into the record the Resolution title.

IT WAS MOVED BY COUNCILMEMBER DAVIS, SECONDED BY COUNCILMEMBER LAINE AND UNANIMOUSLY CARRIED TO ADOPT RESOLUTION NO. 2014-44, DECLARING THE RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN – COMMUNITY FACILITIES DISTRICT NO. 2014-1, BIJOU AREA EROSION CONTROL PROJECT. 1023/1033/1139

b-4: An (Uncodified) Ordinance of the South Lake Tahoe City Council Levying Special Taxes within a Community Facilities District No. 2014-1 (Bijou Area Erosion Control Project)

Mayor Cole read aloud into the record the Ordinance title.

IT WAS MOVED BY COUNCILMEMBER LAINE, SECONDED BY COUNCILMEMBER SWANSON AND UNANIMOUSLY CARRIED TO WAIVE THE FIRST READING OF THE ORDINANCE AND READ BY TITLE ONLY; AND TO REFER TO THE SECOND READING AND ADOPTION AT THE AUGUST 5, 2014, CITY COUNCIL MEETING. 1005/1023

UNFINISHED BUSINESS:

(a) Discussion and Possible Direction/Action Regarding a Draft Memorandum of Understanding (MOU) between the City of South Lake Tahoe and the Tahoe Regional Planning Agency (TRPA) for Delegated Permitting Authority

Development Services Director Roverud provided the staff report along with information on the current MOUs, Area Plan MOUs, and potential implications of entering into the new MOUs which would delegate TRPA permit review authority to the City. She indicated that a Draft MOU was attached to the staff report for review and for additional discussion and Council input prior to it being forwarded to the TRPA Regional Plan Implementation Committee (RPIC) for their first review of that document. Roverud noted the likelihood of several revisions and said that this would come back before the Council for their final adoption in the fall.

Roverud referenced the City's current delegated permitting authority along with the additional permitting authority that the City would assume due to the new MOU and within the Area Plan areas and said this draft MOU incorporated all those issues. She acknowledged the potential for City staff to accept the responsibility of reviewing additional projects that were larger on behalf of the TRPA and stated she did not presently envision that the mid-sized projects would be a huge work load burden on the City, but she noted if significant redevelopment increases were to occur in our community those resource issues would need to be addressed in the future. Roverud reported on the discussions with the TRPA staff regarding the written reporting associated with the new MOU and said it had been clarified that the TRPA would be requesting raw data and project by project data which was what the City currently provided under the Citywide MOU. She stated that the TRPA staff had agreed to provide a template outlining the reporting requirements and had indicated that the new MOU would not require analysis, summaries and comprehensive reporting.

UNFINISHED BUSINESS – Item (a): (Continued)

Roverud reported on discussions regarding the importance of training and of having clear, thorough communications between the City and TRPA staff related to the TRPA's Code, policies and procedures to ensure that the City's staff would apply those consistently. She indicated that the TRPA had acknowledged the importance of those issues and said that the City had included bolstered language in the MOU for ongoing training. Roverud stated that a renewed MOU should strengthen the partnership between the City and the TRPA and that the benefits of this new MOU to the community should include an increased efficiency and consistency in the Project Application Review process which could facilitate more improvements in our built environment.

Councilmember Swanson remarked on the need for exceptional coordination between the TRPA and City staff to ensure that the execution of the first projects under the new RPU would be flawless and inquired if there were any additional steps the City should take to ensure that the level of training and shared resources would be appropriate.

Roverud indicated that discussions on those topics were ongoing and she acknowledged while the TRPA Code did not often change she noted the different trends in the building community. She stated the importance of addressing issues with the TRPA staff and for everyone to meet with enough frequency and be wholly aligned in interpretations so that clear, consistent information could be provided to the public to avoid delays. Roverud indicated that the relationship between the City staff liaison and the TRPA's staff liaison would need to be a priority for both agencies and said the initial consideration was for quarterly trainings.

Swanson acknowledged that the current workload of the City's staff was stretched prior to this MOU and said she wanted to ensure that there would be adequate training and support for them so they could continue to perform at a high level.

Roverud acknowledged that with other codes such as with state laws there were training classes but said in this instance the City's staff would be very reliant on the TRPA's staff because they were the resident experts in this field.

Councilmember Conner expressed her appreciation to City and TRPA staff for their collective hard work on this MOU and attempting to make processes easier for people wanting to do business in our town or make improvements.

At 10:03 a.m., Mayor Cole asked if anyone in the audience wished to provide comment.

1. Jesse Patterson, local resident and representative from the League to Save Lake Tahoe, commended City staff for their hard work on this MOU process and for working so closely with the TRPA's staff and the League's staff on the details. He expressed his satisfaction at the progress and encouraged the Council to maintain and approve the language contained in this draft and to remain on the proposed timeline. Patterson indicated that this was the same language contained in the Douglas County, Nevada/South Shore MOU and that the key components were the monitoring and reporting elements that were essential to ensure that the Area Plans were working. He stated that the League had supported this Area Plan Process and believed it could work and they wanted to be certain that all checks and balances and reporting were adhered to and that this remained on the proposed timeline.

At 10:05 a.m., Mayor Cole closed the public comment period.

IT WAS MOVED BY COUNCILMEMBER DAVIS, SECONDED BY COUNCILMEMBER CONNER AND UNANIMOUSLY CARRIED TO APPROVE THE DRAFT MEMORANDUM OF UNDERSTANDING (MOU). 1009/1012/1047

Exhibit 7

April 2025 email from City Clerk re Public Records Administration

Public comment

Susan Blankenship <sblankenship@cityofslt.us> Tue, Apr 29, 2025 at 3:49 PM
To: Al Miller <syngineer1@gmail.com>

Hello Mr. Miller, see my responses below.

Can you please explain why my email addressed to PublicComment <publiccomment@cityofslt.us> as specified in the Planning Commission agenda announcement was routed to a folder for "junk" email?

I do not know.

Is this routing applicable to all email delivered to the above address, or particular to my address, syngineer1@gmail.com?

I do not know why your email was sent to the junk folder, this email is routinely used.

Who controls this routing?

I assume our Microsoft Outlook and its security parameters, but I do not work in IT.

Can you also please confirm whether the pre-meeting comments I emailed are included now in the public record for this Planning Commission action or whether they are excluded because they were not distributed to the Commission members or the public?

We do add emails not received prior to action into the record.

Lastly for now, you wrote: "When an email is distributed to the commission, the attachments are active links until it is added to the administrative record." Will you please further explain and confirm how emailed public comments are administered: Emailed comments are forwarded by email to individual commission members with attachments included that can be read, thus the attachments are "active"?

Correct.

Are the comments also posted to a designated location on the City's website accessible to the public with 'active" attachments? If so, when?

The email is printed hard copy and placed in a binder in the lobby available to the public at the same time it is distributed to the commission. I do not print attachments.

Then, what happens to attachments to emailed public comments after the meeting is concluded and the public record is compiled? Are the attachments retained in the public record?

A pdf of the email is uploaded into the administrative record. I do not download or otherwise convert attachments.

If you have further questions you may call me.

530-318-1461

Susan Blankenship

Get Outlook for iOS

From: Al Miller <syngineer1@gmail.com>
Sent: Tuesday, April 29, 2025 11:48:10 AM
To: Susan Blankenship <sblankenship@Cityofslt.us>
Subject: Re: Public comment

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]
[Quoted text hidden]

Exhibit 8

April 17, 2025 Carthan email to City, Public Interest Comments

From: Susan Blankenship on behalf of PublicComment
To: Yvette Miranda
Subject: FW: Planning Commission Meeting Item # 2 — Thursday, April 17, 2025 at 3:00 pm
Date: Monday, April 21, 2025 1:28:00 PM

Please add this comment to the administrative record for last week's PC Mtg.

Susan Blankenship, CMC
City Clerk

http://www.cityofslt.us
Please note that email correspondence with the City of South Lake Tahoe, along with attachments, may be subject to the California Public Records Act, and therefore may be subject to disclosure unless otherwise exempt.

-----Original Message-----
From: Hattie Carthan <hattie.carthan@freedommail.ch>
Sent: Thursday, April 17, 2025 4:10 PM
To: Natalia Wieczorek <nwieczorek@cityofslt.us>; Gavin Feiger <gfeiger@cityofslt.us>; Julia Lucksinger <jlucksinger@cityofslt.us>; Steven Imhoff <simhoff@cityofslt.us>; Douglas Williams <dwilliams@cityofslt.us>
Cc: PublicComment <publiccomment@cityofslt.us>
Subject: Planning Commission Meeting Item # 2 — Thursday, April 17, 2025 at 3:00 pm

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning Commissioners,

Please reject this application. It is not a question of whether we need housing available for our workforce, it is a matter of how and where to do it justly. This project is inappropriate for a variety of reasons. It is patently offensive to the notion of environmental justice, which is the idea that the most economically vulnerable classes of society should not be forced to take the brunt of the most environmentally hazardous areas of a region.

In Lake Tahoe, these hazardous areas are directly adjacent to highly-trafficked U.S. Highway 50 and Pioneer Trail which are actually both function and are classified as arterial highways <https://en.wikipedia.org/wiki/Arterial_road> making the direct placement of residential housing a screen-out contraindication from a safety and vision zero requirement. Living adjacent to major highways is strongly correlated with a decade less in average life expectancy; this is due to heavy environmental stressors such as carcinogenic tailpipe emissions—thousands of small tailpipes going by are actually equivalent to the pollution of a smokestack, chronic noise exposure, and adjacent vehicle-on-vehicle and pedestrian-on-vehicle collisions. The correct solution demanded by the central tenets of environmental justice is to lightly and evenly disperse low-income hosing throughout city residential areas accessible by the same micro-transit services rich professionals use, rather then to relegate them to unreliable mass transit. The best option is to purchase back the existing housing stock as it goes up for sale, deed restrict it, and the lease it to the same target class of individuals; this can be done for less than the $800,000 dollars a bedroom that was spent at Sugarpine.

Moreover, this project will develop several restored parcels in a scenic corridors <https://www.trpa.gov/scenic-protection-program/> which were supposed to become the convergence of two parkways:

This project will also exacerbate vehicular congestion, and make it harder to accomplish long-term plans for bike-paths that run adjacent to these arterial highways. Bike paths need to be offset at least 15-20 feet from the highway's

edge do be properly engineered for winter conditions; bike paths need to be engineered to for regular use during the known, expected, and foreseeable worst case scenarios, which includes not being obstructed by snow storage ejected off adjacent highways or being in the winter splash zone thereby imbuing commuters by pervasive spray of aerosolized road grime from traffic driving in sleet or slush at high speeds.

Planning commissioners, you have agency. You are not on the commission to merely rubber-stamp whatever is before you. Please exercise your prerogative to reject this project.

Thanks,

Hattie Carthan

Exhibit 9

April 21, 2025 Carthan email to TRPA, Public Interest Comments

From: Hattie Carthan <hattie.carthan@freedommail.ch>
Sent: 4/20/2025 6:28:56 PM
To: Hayley Williamson <hayley.a.williamson@gmail.com>; Vince Hoenigman <vhoenigman@yahoo.com>; fvaguilar@sos.nv.gov <fvaguilar@sos.nv.gov>; Shelly Aldean <shellyaldean@gmail.com>; Alexandra Leumer <TRPALeumer@yahoo.com>; Ashley Conrad-Saydah <ashleyc@alumni.princeton.edu>; Ben Kieckhefer <benontrpa@gmail.com>; Belinda Faustinos <belindafaustinos@gmail.com>; Cody Bass <cbass@cityofslt.us>; Meghan Hays <Meghan.hays9@gmail.com>; Alexis Hill <AHill@washoecounty.us>; Cindy.Gustafson <cindygustafson@placer.ca.gov>; James Settelmeyer <JSettelmeyer@dcnr.nv.gov>; BOSFive@edcgov.us <BOSFive@edcgov.us>; Wesley Rice <wrice@douglasnv.us>
Cc: Public Comment <PublicComment@trpa.gov>;
Subject: Governing Board Documents April 23-24, 2025-Hybrid Meeting—General Comment
Attachments: housing.jpg , Plan 1.jpg , Plan2.jpg , housing.png , 2022-04-evidence-california-environmental-policies-preferentially.pdf , NATURE—Disparate air pollution reductions during California's COVID-19 economic shutdown.pdf , NATURE—An environmental justice analysis of air pollution emissions in the United States from 19.pdf , Driving-Environmental-Inequality-Accepted-Draft-Environmental-Sociology.pdf

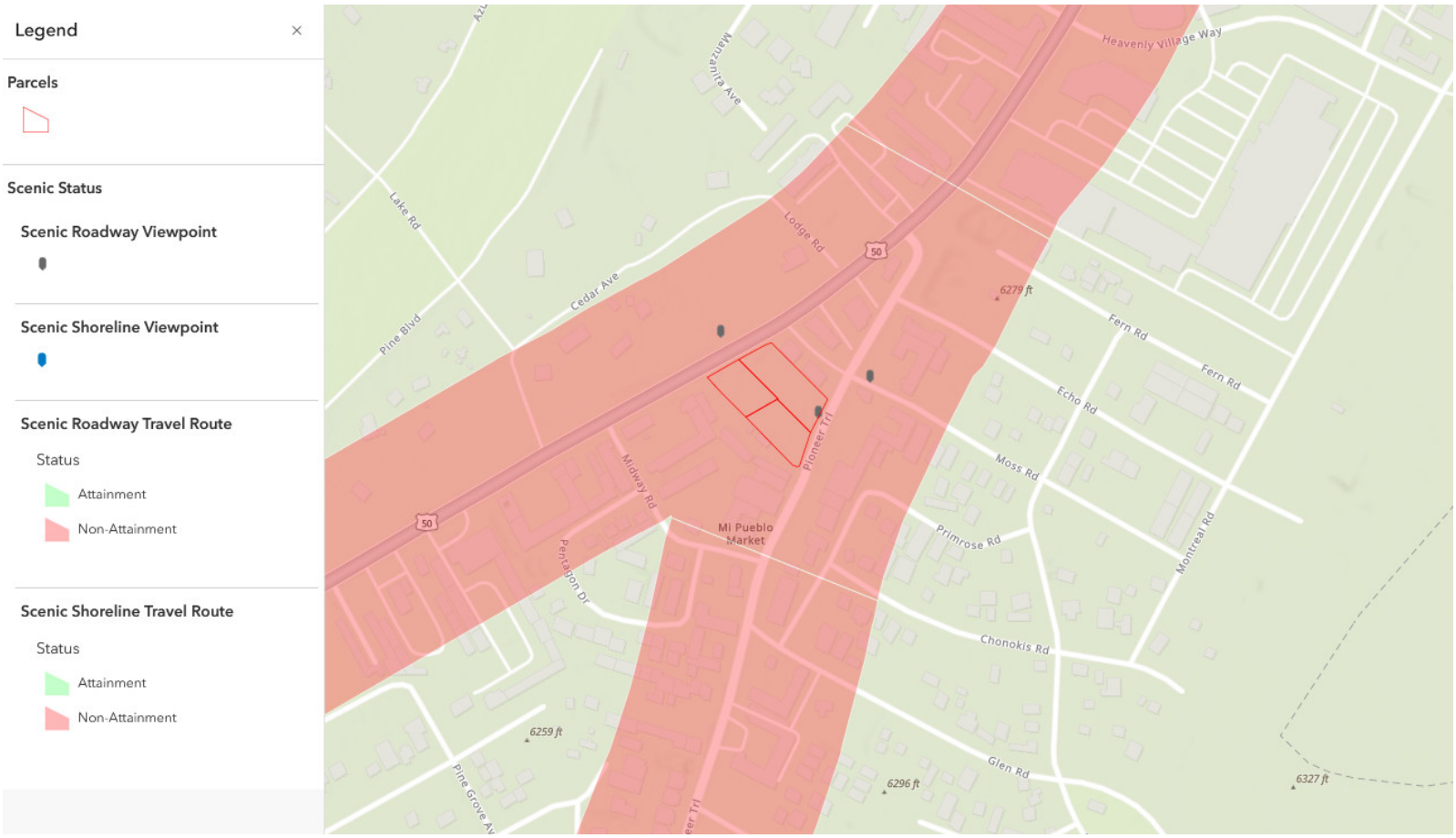
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TRPA Officers,

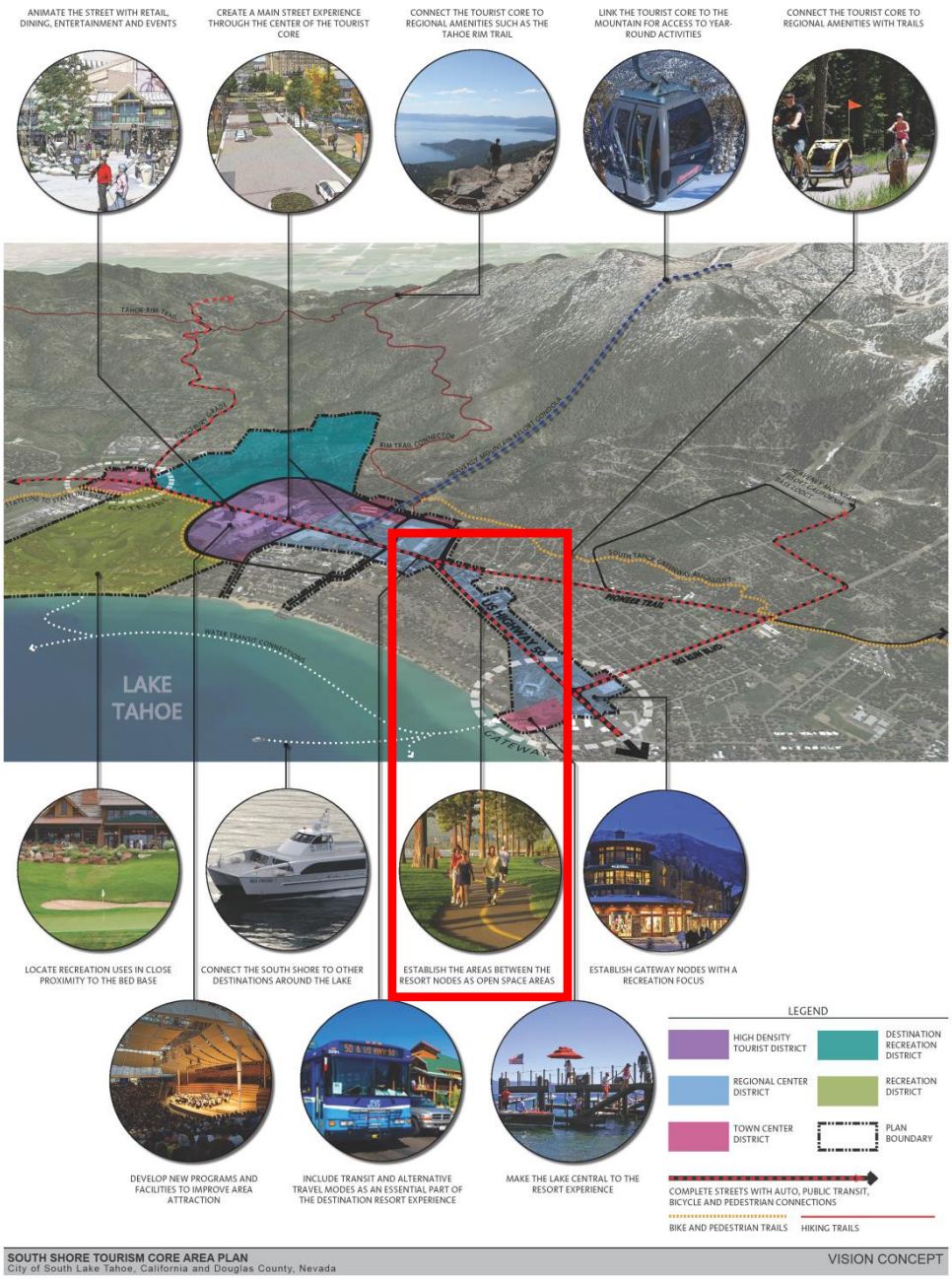
Please reject this proposed housing development: TRPA Multi-Family Dwelling Project Application - 3900 & 3908 Lake Tahoe Boulevard Affordable Housing Project, APNs 029-170-001 & 029-170-002, File #24-173. It is not a question of whether we need housing available for our workforce, it is a matter of how and where to do it justly. This project is inappropriate for a variety of reasons. It is patently offensive to the notion of environmental justice, which is the idea that the most economically vulnerable classes of society should not be forced to take the brunt of the most environmentally hazardous areas of a region.

In Lake Tahoe, these hazardous areas are directly adjacent to highly-trafficked U.S. Highway 50 and Pioneer Trail which actually both function and are classified as arterial highways making the direct placement of residential housing a screen-out contraindication from a safety and vision zero requirement. Living adjacent to major highways is strongly correlated with a decade less in average life expectancy; this is due to heavy environmental stressors such as carcinogenic tailpipe emissions—thousands of small tailpipes going by are actually equivalent to the pollution of a smokestack, chronic noise exposure, and adjacent vehicle-on-vehicle and pedestrian-on-vehicle collisions. The correct solution demanded by the central tenets of environmental justice is to lightly and evenly disperse low-income housing throughout city residential areas accessible by the same micro-transit services rich professionals use, rather then to relegate them to unreliable mass transit that rich professionals would almost never willingly use themselves. The best option is to purchase-back the existing housing stock as it goes up for sale, deed restrict it, and then lease it to the same target class of individuals; this can be done for less than the $800,000 dollars a bedroom that was spent at Sugarpine at the "Y."

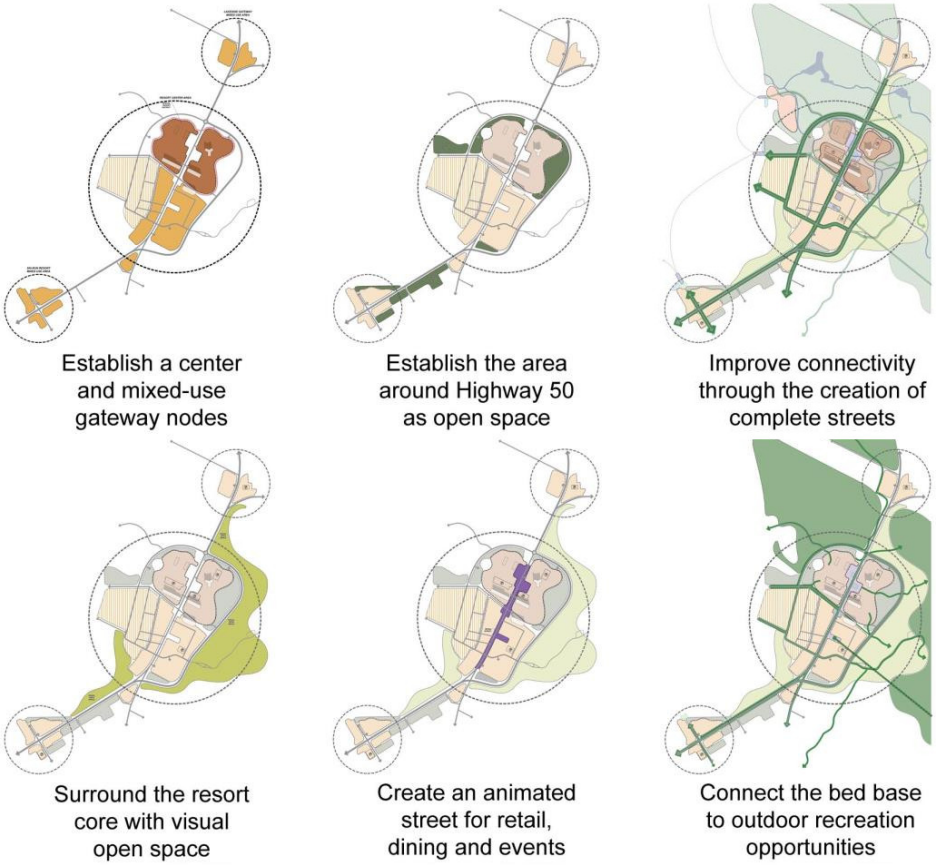
Moreover, this project will develop several restored parcels in a scenic corridors which were supposed to become the convergence of two parkways; this formerly developed land was restored to "a natural state" because TRPA scenic roadway viewpoints are literally on and adjacent to these parcels—the city was subsequently rewarded with development allocations for this good deed:



This project will also exacerbate vehicular congestion, and make it harder to accomplish long-term plans for bike-paths that run adjacent to these arterial highways as a scenic parkway—complete streets. **Bike paths need to be offset at least 15-20 feet from the highway's edge** to be properly engineered for winter conditions. Bike paths need to be engineered for regular use during the known, expected, and foreseeable worst case scenarios, which include not being obstructed by snow storage regularly ejected off adjacent highways or being in the winter splash zone thereby imbuing commuters with pervasive spray of aerosolized road grime from traffic driving in sleet or slush at high speeds.



There needs to be a 20-foot inset pedestrian path on the south side of Highway 50 between Ski Run Boulevard and Pioneer Trail. This area is functionally impassible for pedestrian or bicycle commuters for much of the winter, as it is prohibitively **soiling** to work clothes/attire or outright dangerous. The long-term plans from the 1980's were to create a parkway along Highway 50, but now there is unconscionable new development on previously restored lands in this parkway near the IHOP and now being contemplated behind 7-11!

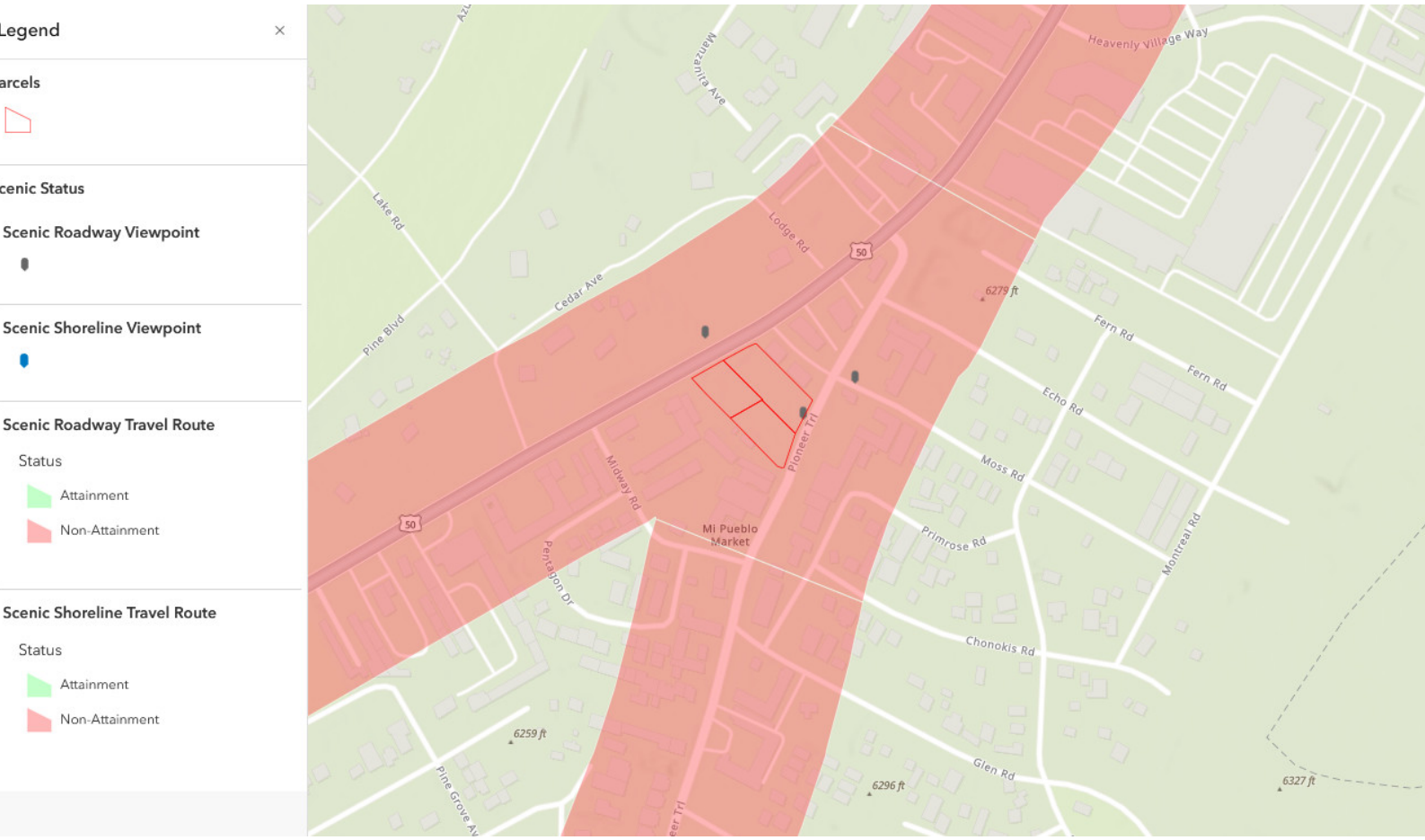


Highway 50 is loud, with heavy interstate traffic, especially in the winter when vehicles and heavy machinery wear noisy tire chains. Imagine trying to sleep or letting your kids play in the driveway! Image you or your loved one getting cancer from millions of tailpipe emissions! Would you live there? Placing high-density residential units on a literal arterial highway violates its "functional classification." It transgresses long-term planing, it is ethically wrong, and its dangerous and hazardous to human health. READ THE ATTACHED SCIENCE!!!

TRPA Governing Board, you have agency. You are not here to merely rubber-stamp whatever is before you. TRPA Staff, like duplicitous Tahoe Prosperity Center Board Director Karen Fink are **gaslighting** you that this is "environmental justice"; peer-reviewed science has long-identified such housing placements just like these as **the epitome of environmental injustice** (*see attached PDF's*)! Please exercise your prerogative to reject this project.

Thanks,

Hattie Carthan


Legend
arcels
cenic Status
Scenic Roadway Viewpoint
Scenic Shoreline Viewpoint
Scenic Roadway Travel Route
Status
Attainment
Non-Attainment
Scenic Shoreline Travel Route
Status
Attainment
Non-Attainment
Heavenly Village Way
Manzanita Ave
Lake Rd
Lodge Rd
Cedar Ave
Pine Blvd
50
6279 ft
Fern Rd
Fern Rd
Echo Rd
Moss Rd
Pioneer Trl
Midway Rd
Mi Pueblo Market
Primrose Rd
Montreal Rd
Pentagon Dr
Chonokis Rd
6259 ft
Glen Rd
6296 ft
6327 ft
Pine Grove Ave

ANIMATE THE STREET WITH RETAIL, DINING, ENTERTAINMENT AND EVENTS



CREATE A MAIN STREET EXPERIENCE THROUGH THE CENTER OF THE TOURIST CORE



CONNECT THE TOURIST CORE TO REGIONAL AMENITIES SUCH AS THE TAHOE RIM TRAIL

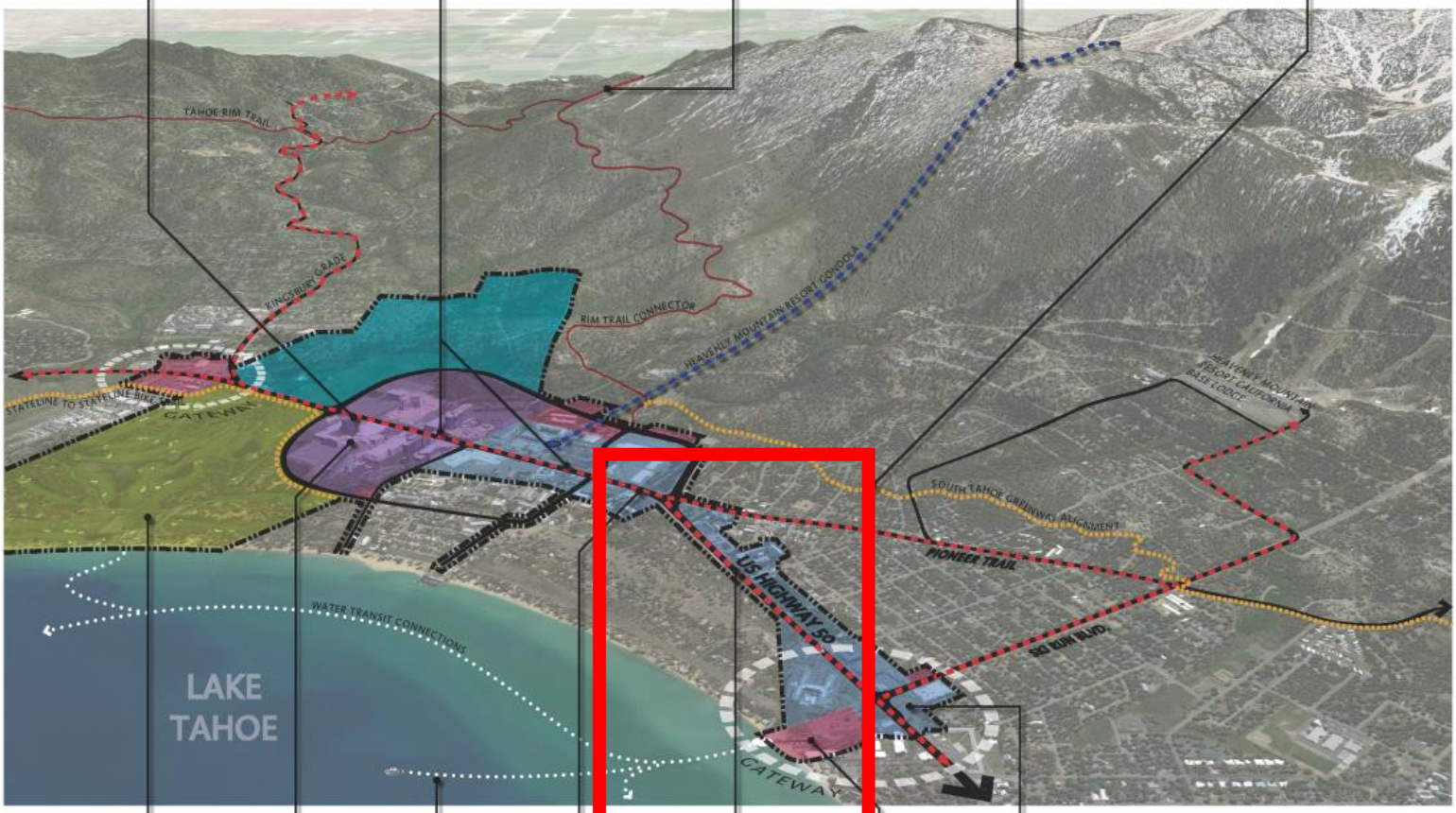


LINK THE TOURIST CORE TO THE MOUNTAIN FOR ACCESS TO YEAR-ROUND ACTIVITIES



CONNECT THE TOURIST CORE TO REGIONAL AMENITIES WITH TRAILS







LOCATE RECREATION USES IN CLOSE PROXIMITY TO THE BED BASE



CONNECT THE SOUTH SHORE TO OTHER DESTINATIONS AROUND THE LAKE



ESTABLISH THE AREAS BETWEEN THE RESORT NODES AS OPEN SPACE AREAS



ESTABLISH GATEWAY NODES WITH A RECREATION FOCUS



DEVELOP NEW PROGRAMS AND FACILITIES TO IMPROVE AREA ATTRACTION



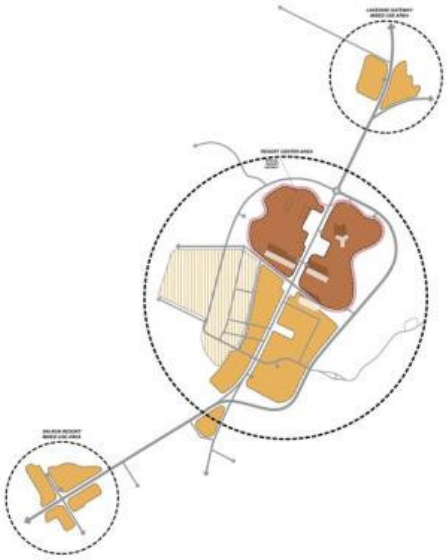
INCLUDE TRANSIT AND ALTERNATIVE TRAVEL MODES AS AN ESSENTIAL PART OF THE DESTINATION RESORT EXPERIENCE



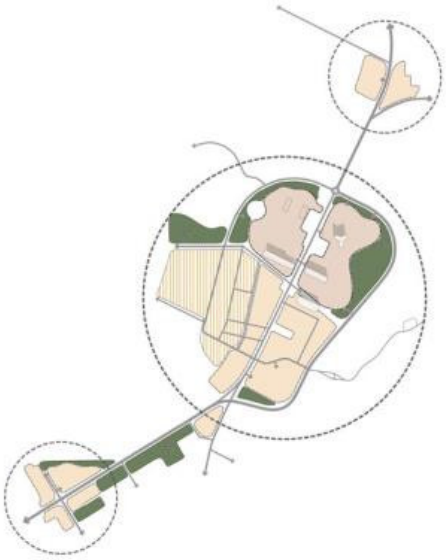
MAKE THE LAKE CENTRAL TO THE RESORT EXPERIENCE

LEGEND

- HIGH DENSITY TOURIST DISTRICT
- DESTINATION RECREATION DISTRICT
- REGIONAL CENTER DISTRICT
- RECREATION DISTRICT
- TOWN CENTER DISTRICT
- PLAN BOUNDARY
- COMPLETE STREETS WITH AUTO, PUBLIC TRANSIT,



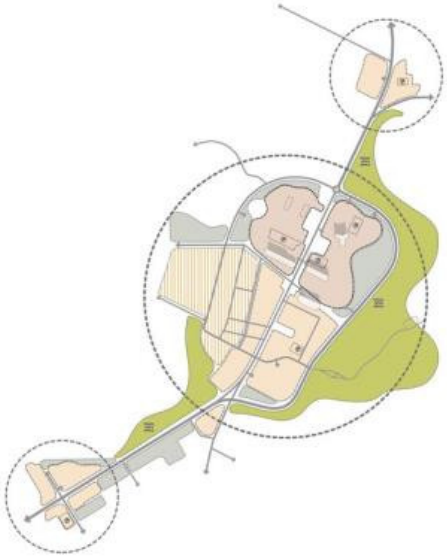
Establish a center and mixed-use gateway nodes



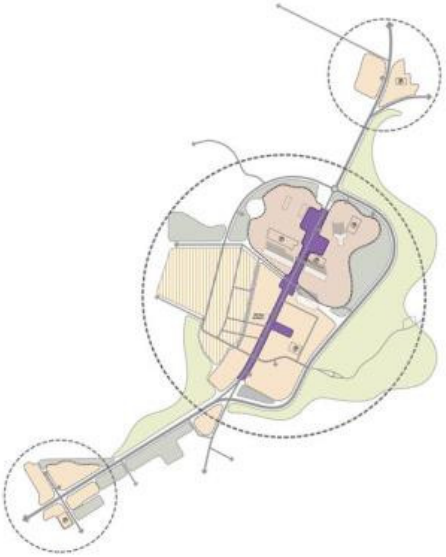
Establish the area around Highway 50 as open space



Improve connectivity through the creation of complete streets



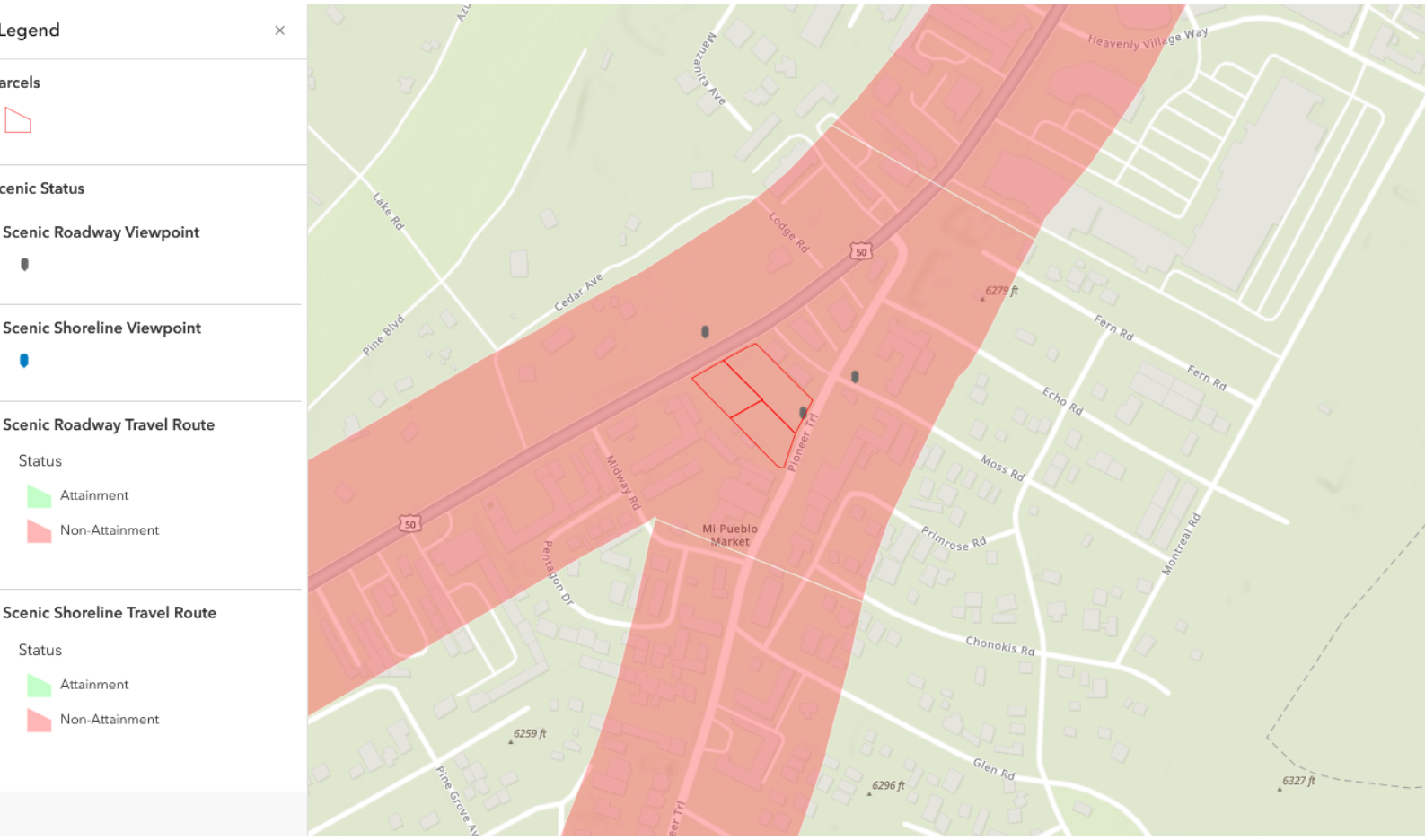
Surround the resort core with visual open space



Create an animated street for retail, dining and events

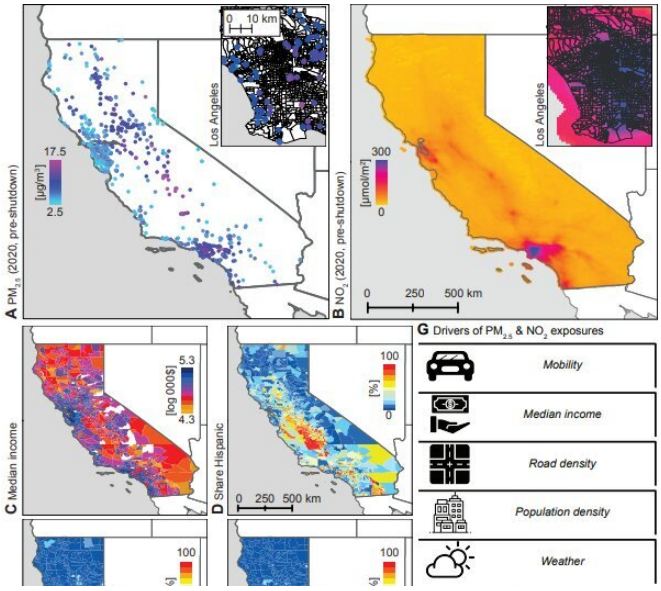


Connect the bed base to outdoor recreation opportunities


Legend
arcels
cenic Status
Scenic Roadway Viewpoint
Scenic Shoreline Viewpoint
Scenic Roadway Travel Route
Status
Attainment
Non-Attainment
Scenic Shoreline Travel Route
Status
Attainment
Non-Attainment
Heavenly Village Way
Manzanita Ave
Lake Rd
Lodge Rd
Cedar Ave
Pine Blvd
50
6279 ft
Fern Rd
Fern Rd
Echo Rd
Moss Rd
Pioneer Trl
Midway Rd
Mi Pueblo Market
Primrose Rd
Montreal Rd
Pentagon Dr
Chonokis Rd
6259 ft
Glen Rd
6296 ft
6327 ft
Pine Grove Ave

New evidence suggests California's environmental policies preferentially protect whites

7 April 2022



Pollution and demographic data used in this study. A,B Average surface PM2.5 and tropospheric NO2 concentrations in the pre-shutdown period of 2020 in California, United States. C Median income ($USD) in each census block group from the U.S. Census Bureau 2018 5-year American Community Survey (ACS). D-F Share of the population in each census block group that is Hispanic, Asian, or Black, from the ACS. G Schematic showing the many slower-changing (assumed to be static over shorter periods) and higher-frequency factors that contribute to heterogeneous pollution exposures. Credit: UC San Diego

Asian and Hispanic communities experience significantly more air pollution from economic activity compared to predominantly white neighborhoods across the state of California, according to new research from the University of California San Diego's School of Global Policy and Strategy.

The study published in the journal *Nature Sustainability* suggests California's environmental regulations as a whole preferentially protect white, non-Hispanic people within the state from exposure to air pollution.

The study focused on 2020 when the state issued shelter-in-place orders in response to COVID-19. The researchers compared patterns of air pollution both before and during the shutdown, using data from public and privately-owned air monitor networks, along with satellite measurements of the pollutant gas nitrogen dioxide. After considering various factors, even how much communities were sheltering-in-place, the researchers found that during the period when the "in-person" economy was shut down, neighborhoods with high Asian and Hispanic populations experienced disproportionately large declines in air pollution. That means the inverse is true when it's business as usual.

They also found that Black communities didn't see a similar disproportionate benefit in air quality during the shutdown. Black California residents were exposed to higher levels of pollution compared to whites during the shutdowns when only essential businesses were operating. The same was true after COVID-19 restrictions lifted. This suggests power plants, electricity generators and other emission sources that were not curtailed during the shelter-in-place orders are regularly exposing these populations to dirtier air.

The paper also finds low-income communities are consistently exposed to more pollution when the economy is fully functioning and that these neighborhoods also saw disproportionately cleaner air during the shutdown. However, when the researchers accounted for income in their analysis, it didn't explain the findings of higher air pollution exposures for Asian, Hispanic communities

throughout the state.

"Income only explains about 15 percent of the disproportionate decrease in air pollution experienced by Asian and Hispanic communities during the shutdown," said Jennifer Burney, the Marshall Saunders Chancellor's Endowed Chair in Global Climate Policy and Research at the School of Global Policy and Strategy. "This may be surprising to many because people tend to conflate income and race, both because systemic discrimination is a hard thing to face and because we have accepted that we live in a world where individuals can 'buy' cleaner air through higher housing prices in less polluted areas."

Burney added, "the COVID shutdown gave us a window into what pollution patterns look like when most of the economy is turned off and it showed that though there is some small overlap, income does not explain the racial and ethnic bias in how our economy creates and distributes pollution."

Burney and the research team take this as evidence of an environmental policy failure. In California, all emissions are subject to regulation—transportation, energy, construction and other industries have to meet strict environmental standards.

"One would think that in a state with strong environmental policies, where we track what is being emitted where, that our regulatory system might do a good job of protecting everyone equally," Burney said. "But this is really strong evidence of systemic bias. Pollution sources from everything that was shut down, transportation, businesses, restaurants, etc. all add up during business-as-usual conditions. Thus, the total system is tipped, exposing racial and ethnic minorities to more pollution."

The health impacts of poor air quality are far-reaching. Unhealthy air is linked to higher rates of infant mortality and adult mortality as well as respiratory and cardiovascular illnesses.

Policy recommendations to address systemic environmental racism

While the study is limited to the state of California, the researchers believe that the disparity in air quality between ethnicities most likely applies to other states. The paper includes various policy recommendations. For example, the largest pollution source affected by the pandemic's slowdown was transportation, so policies that affect transportation emissions could have important impacts for California's underrepresented communities.

Additionally, given that air pollution disparities experienced by racial and ethnic minorities are not explained by income, it means environmental strategies based on income alone could not be expected to achieve strong racial and ethnic equity. This suggests that different metrics should be incorporated when evaluating environmental regulations to meet average environmental standards and promote equity.

"There is no clear, quantitative equity criterion applied in regulatory analysis to safeguard against environmental racism," said co-author Katharine Ricke, an assistant professor at the School of Global Policy and Strategy and Scripps Institution of Oceanography. "For example, if an industry wants to build a factory, they have to complete an environmental assessment report, but that report isn't required to include a set of metrics to demonstrate how different demographic groups nearby would be affected. If industries had to run atmospheric models to show that the proposed facility is not going to disproportionately affect minority neighborhoods nearby, that could instigate a significant shift in making environmental regulation more equitable."

The authors also suggest including communities in the planning process when there are proposed changes to their surrounding environment that could impact air quality.

"This is not new, but procedural justice is also critical," said co-author Pascal Polonik, a Ph.D. candidate at Scripps Oceanography. "Communities need to be engaged in meaningful ways to ensure that everyone has access to what should be a democratic process."

Polonik added that "by improving access to information, such as data from the crowd-sourced sensors that were utilized in the study, could help communities be part of informed decision-making. Unfortunately, these sensors tend to be located in the places least likely to be impacted by unjust pollution exposure."

Other paper authors include Richard Bluhm, assistant professor at Leibniz University Hannover and fellow in the Department of Political Science at UC San Diego; Kyle S. Hemes, postdoctoral research fellow at Stanford Woods Institute for the Environment; Luke C. Sanford, assistant professor at Yale University's School of the Environment; Susanne A. Benz, postdoctoral fellow at Dalhousie University; and Morgan C. Levy, assistant professor at the School of Global Policy and Strategy and Scripps Institution of Oceanography.

More information: Jennifer Burney, Disparate air pollution reductions during California's COVID-19 economic shutdown, *Nature Sustainability* (2022). DOI: 10.1038/s41893-022-00856-1. www.nature.com/articles/s41893-022-00856-1

Provided by University of California - San Diego

APA citation: New evidence suggests California's environmental policies preferentially protect whites (2022, April 7) retrieved 14 June 2022 from https://phys.org/news/2022-04-evidence-california-environmental-policies-preferentially.html

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nature sustainability

ARTICLES

https://doi.org/10.1038/s41893-022-00856-1

Check for updates

Disparate air pollution reductions during California's COVID-19 economic shutdown

Richard Bluhm[1,2,8], Pascal Polonik[3,8], Kyle S. Hemes[4,8], Luke C. Sanford[2,5,6,8], Susanne A. Benz[6,7,8], Morgan C. Levy[3,6,8], Katharine L. Ricke[3,6] and Jennifer A. Burney[6] ✉

Minority communities in the United States often experience higher-than-average exposures to air pollution. However, the relative contribution of institutional biases to these disparities can be difficult to disentangle from other factors. Here, we use the economic shutdown associated with the 2020 COVID-19 shelter-in-place orders to causally estimate pollution exposure disparities caused by the in-person economy in California. Using public and citizen-science ground-based monitor networks for respirable particulate matter, along with satellite records of nitrogen dioxide, we show that sheltering in place produced disproportionate air pollution reductions for non-White (especially Hispanic and Asian) and low-income communities. We demonstrate that these racial and ethnic effects cannot be explained by weather patterns, geography, income or local economic activity as measured by local changes in mobility. They are instead driven by regional economic activity, which produces local harms for diffuse economic benefits. This study thus provides indirect, yet substantial, evidence of systemic racial and ethnic bias in the generation and control of pollution from the portion of the economy most impacted in the early pandemic period.

There exist substantial concerns in the United States about the pervasive harms of racism, which modern scholarship conceptualizes as either active or passive normalization of racial or ethnic inequities[1]. (In this Article, we use 'racism' in the modern descriptive sense that does not hinge on the intent of the perpetrator(s); that is, actions and policies that promote race-based inequities are racist, whether or not such an outcome is intended.) Particularly worrisome is the potential for institutionalized (or systemic) racism—in the form of policies, regulations and norms that favour certain racial or ethnic groups[2]—to perpetuate such harm via democratic processes. Rigorous quantitative evidence of institutional racism can be difficult to come by because the effects of various social and institutional processes that may embed bias (for example, urban planning and environmental regulation) often overlap in space and time and thus stymie attempts at more specific attribution (for example, ref. [3]). This in turn makes policy proposals that address racism head-on more difficult to justify. This has long been the case with environmental injustice, or the manifestation of systemic racism in environmental policymaking and enforcement[4]. (The term 'environmental injustice' is often used more broadly to describe disparities across multiple demographic dimensions, including, but not limited to, race and ethnicity. In this Article, for clarity, we use this more specific definition with a primary focus on racial and ethnic bias in environmental policy.)

Disparities in air pollution concentrations provide a clear example of this attribution problem[5,6]. Air pollution is linked to a wide range of negative health consequences[7] and is estimated to cause nearly 9 million premature deaths globally per year[8]. On average, these health effects are not distributed evenly among different demographic groups[9–11], running counter to the notion that society's environmental burdens should be equally shared[5,6,12]. However, despite observable exposure gradients across racial and ethnic groups, causally ascribing such inequities to bias in environmental policy has proved difficult. (In this Article, we consider 'environmental policy' to be the full landscape of policies, laws, statutes, regulations and enforcement mechanisms governing environmental quality. This definition includes gaps; that is, existing loopholes, lack of regulation and non-enforcement of rules are also forms of policy.) Economic and other social policymaking (for example, housing, transportation, education) over generations has created the modern geography of who lives where. Over time, myriad physical and social confounds—including variable atmospheric transport processes[13], economic inequalities[10,14] and neighbourhood demographics[9,15]—have become correlated with present-day pollution exposures. As such, moving beyond simple observations of disparate but confounded exposures in contemporary cross sections to causal attribution of environmental injustice requires additional evidence. This can be achieved by a random perturbation to the status quo[16]; such a shock to the policy regime was provided by the initial COVID-19 economic shutdown in California[17].

In early 2020, governments implemented unprecedented policies to limit the public health impacts of the COVID-19 pandemic, including stay-at-home orders and travel limitations, with California instituting some of the most aggressive lock-down measures in the United States[18]. The well-known side effect of these policies was widespread economic shutdown: businesses closed, factories shuttered and employees temporarily discontinued their daily commutes[19]. (In California, 60.51% of businesses reported a decline in demand, 22.27% reported closure due to government mandate and only 13.9% indicated that the pandemic had no impact on their business[20]; the transport sector accounted for an estimated 97.5% of the decline in CO_2 emissions in spring 2020 over the same period in 2019[21].) Because pollutants such as particulate matter with diameter smaller than 2.5 μm ($PM_{2.5}$) and nitrogen

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dioxide (NO_2) are produced by transportation, industrial processes, energy production and agriculture[22], pollutant concentrations tend to track aggregate economic activity[23,24]. The lock-down corresponded to reductions in both satellite and ground-based observations of NO_2 and $PM_{2.5}$ concentrations, particularly in transportation-heavy metropolitan regions[25,26]. We leverage this period (March–April 2020) as a natural experiment that partially disentangles the confounding underlying legacy of historical social and economic policy from average air pollution exposures by providing a comparison between shutdown and non-shutdown (status quo) pollution distributions.

We employ established generalized difference-in-differences methods to quantify declines in ambient concentrations of two criteria pollutants, ground-level $PM_{2.5}$ and tropospheric column number density NO_2, during March–April 2020 and test for the existence of heterogeneous effects associated with the racial and ethnic composition of neighbourhoods. We utilize data from a relatively new network of low-cost particulate matter monitors that are predominantly privately owned and deployed outside homes, along with data from state-run air-quality sensors, satellite measurements, demographic and socioeconomic information, geographic data and cell-phone-based location data. By combining these datasets, we disentangle the contribution of local conditions (income, mobility, urban geography, weather) to local air pollution exposures. Data on mobility—defined as the extent to which individuals spend time away from their homes—are particularly important: they characterize variability in the shutdown's effect on the local activity of different communities, as essential worker status and economic insecurity are associated with less time spent at home[27,28].

Because the reduction of pollution when shutting down most of the in-person economy corresponds to the pollution burden created by that portion of the economy, pre-pandemic, we interpret statistically larger reductions in air pollution exposures for minority racial and ethnic groups—conditional on other confounding factors—as evidence of embedded bias in the generation and control of pollution from the in-person economy in the status quo. (We use the term 'in-person economy' to refer to economic activity from businesses, including transportation to and from those businesses, that closed during the COVID-19 economic shutdown. As outlined in Executive order N-33-20 of the State of California, closures affected all businesses except those in 16 critical infrastructure sectors: chemical; commercial facilities; communications; critical manufacturing; dams; defence industrial base; emergency service; energy; financial service; food and agriculture; government facility; healthcare and public health; information and technology; nuclear reactors, materials, and waste; transportation systems; and water and wastewater systems sectors. We note that while these sectors had the option to stay open, many did not, or continued operations in a reduced manner.) Our approach also demonstrates complementary inequities in the monitoring of pollution, shedding light on a path towards pro-actively addressing the identified inequities through air pollution monitoring policy that is itself environmentally just.

Results

Using daily and weekly pollution observations, along with demographic, geographic and mobility data, we estimate how much race and ethnicity alone explain the changes in air pollution exposures experienced during the COVID-19 shutdown in California. We account for time-varying factors (local mobility, weather, seasonality) and relatively static factors (population density, income, proximity to roads) known to contribute to heterogeneous pollution exposures. Our approach is described in detail in Methods as well as schematically in Fig. 1g and Extended Data Fig. 1.

Our study area and data are summarized in Fig. 1. Daily aerosol $PM_{2.5}$ measurements are drawn from a network of 830 monitors (106 public monitors from the California Air Resources Board (CARB) and 724 privately owned PurpleAir monitors; Extended Data Fig. 2a) and cover the period from 1 January to 30 April for both 2019 and 2020 to facilitate comparison across economic conditions at the same time of year. The low-cost PurpleAir sensors have been shown to correlate well with research-grade mass-based sensors, although they tend to have a high bias, which we have corrected before analysis (Methods and Supplementary Information). The $PM_{2.5}$ monitors are located in 733 unique census block groups (CBGs) across California. Satellite-derived tropospheric NO_2 (Fig. 1b) measurements from the TROPOMI instrument cover close to all 23,212 CBGs of California (22,503) but at an ~weekly timescale due to the overpass frequency of the Sentinel-5 precursor satellite. Local social, demographic and geographic characteristics (Fig. 1c–f; Methods), including income and population shares for race and Hispanic ethnicity, are heterogeneously distributed across the state; for example, income tends to be higher in coastal communities and cities, and the southeast and Central Valley regions have higher Hispanic population shares. Asian population share is highest in Los Angeles and the San Francisco Bay Area; Asian persons represent over 50% of the population in more than 1,400 CBGs. By contrast, fewer than 300 CBGs have majority Black populations, and these are spread more evenly throughout the state. (We use terminology derived from the census (Methods); Hispanic ethnicity is tallied independently of other race information in the United States and is therefore not mutually exclusive from race (Supplementary Fig. 1)). This complex human geography demonstrates the importance of rich measurement networks in addressing questions of environmental justice. The PurpleAir monitors provide a sevenfold increase in the number of sampled CBGs, although this increase still represents only 3.2% of all California block groups (Supplementary Information).

In 2019 (the year before the pandemic), without controlling for other sources of heterogeneity, areas with lower income and larger Black and Hispanic population shares were exposed to higher-than-average concentrations of both $PM_{2.5}$ and NO_2 compared with wealthier and White, non-Hispanic communities (Extended Data Fig. 3). Such descriptive air-quality differences have long been noted by environmental justice scholars and advocates[29–33], but these relationships are confounded by other drivers of pollution exposures (Extended Data Fig. 1). It is thus difficult to isolate any potential racial or ethnic bias in environmental policy from economic forces or other policies that contributed to the distributions of different populations around the state (for example, redlining)[34].

The COVID-19 pandemic temporarily removed a large portion of this confounding economic geography by 'turning off' most local in-person economic activity in the state. Figure 2 shows the depth and dimensions of this natural experiment across the state. The unique response to the spread of COVID-19, including stay-at-home orders, precipitated a steep decline in the average fraction of the day that people spent away from their homes (hereafter, mobility), which took a little under two weeks after the statewide emergency declaration (4 March 2020) to fully emerge (Fig. 2a). Importantly, reductions in time away from home did not occur equally for all state residents. CBGs with relatively high Hispanic population shares had both higher baseline mobility and much smaller mobility reductions during the shutdown than those with relatively low Hispanic population shares (Fig. 2b and Supplementary Table 1). This is probably due to the greater designation of essential jobs and economic vulnerability among Hispanic populations, relative to non-Hispanic populations, that preclude working from home[35]. This disparity is present, although much less pronounced, for CBGs with high and low Black population shares, and the pre- and post-shutdown differences are reversed for CBGs with high and low Asian population shares. We account for these different local responses in the statistical framework described below.

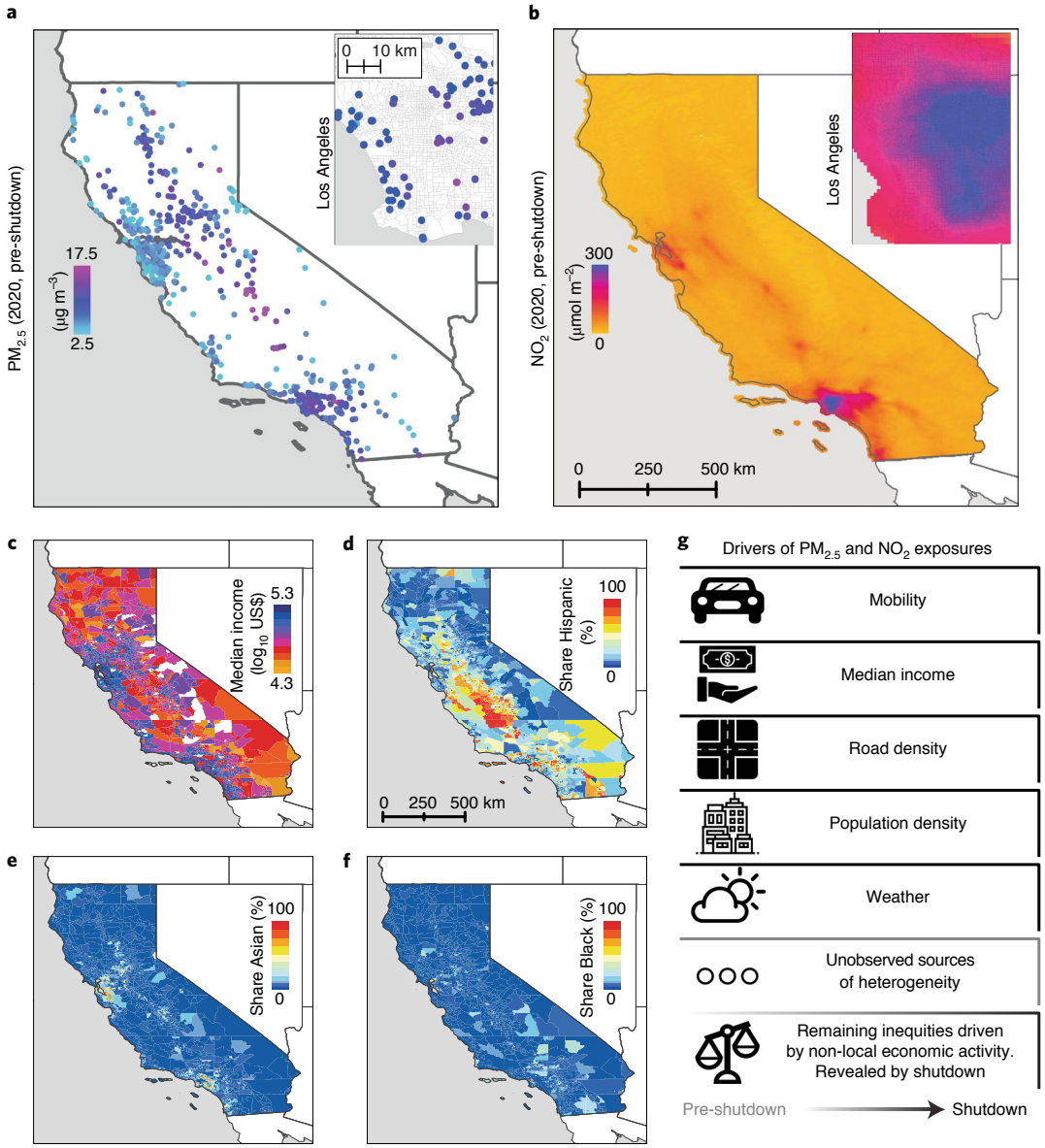


Fig. 1 | Pollution and demographic data used in this study. a,b, Average surface $PM_{2.5}$ (**a**) and tropospheric NO_2 (**b**) concentrations in the pre-shutdown period of 2020 in California, United States. **c**, Median household income (US$) in each CBG from the US Census Bureau 2018 5 yr American Community Survey (ACS). **d**–**f**, Share of the population in each CBG that is Hispanic (**d**), Asian (**e**) or Black (**f**), from the ACS. **g**, Schematic showing both slower-changing (assumed to be static over shorter periods) and higher-frequency factors that contribute to heterogeneous pollution exposures. Symbols in **g** courtesy of Noun Project: Automobile by Symbolon; Income and Highway by Vectors Point; Urban by Eucalup; weather by asianson.design; List by Richard Kunák; inequality by b farias.

Using a series of generalized difference-in-differences models (Methods), we estimate the relative magnitudes of the reductions in $PM_{2.5}$ and NO_2 concentrations before and after the shutdown (adjusting for 2019 concentrations) across different demographic gradients (we show and discuss $PM_{2.5}$ results in the main text, with NO_2 results in the Supplementary Information, for brevity). The best-fit coefficients for these models (Supplementary Tables 2, 3, 6 and 7, Fig. 3 and Extended Data Fig. 4) correspond to the statistically identifiable expected changes in air pollution, across the COVID-19 shutdown window, for a 0% versus 100% share of a given demographic group at the CBG level, or roughly a doubling of non-share variables (for example, income, road density, population density). (We note that estimating the population average change would require a stronger statistical assumption than we make about the similarity of other conditions between 2019 and 2020 (for example, seasonality; see Methods).) These coefficients show that lower-income neighbourhoods in California experienced greater reductions in $PM_{2.5}$ concentration (Fig. 3a); the positive and statistically significant coefficient for income indicates that lower incomes were strongly associated with a greater reduction of pollutant levels during shutdown. For example, our estimates indicate that a block group with an average income that is half that of a wealthier block group would have experienced a 1.0 μg m^{-3} greater reduction in $PM_{2.5}$ exposures. Changes in mobility, road density and population density at the level of a CBG are only weakly associated with changes in $PM_{2.5}$ concentrations (Fig. 3a).

We consider mobility to be a proxy for *l*ocal pollution-causing economic activity and assume that decreased mobility directly corresponded to reduced vehicle emissions along with a suite of local business-related emissions (for example, restaurant closures).

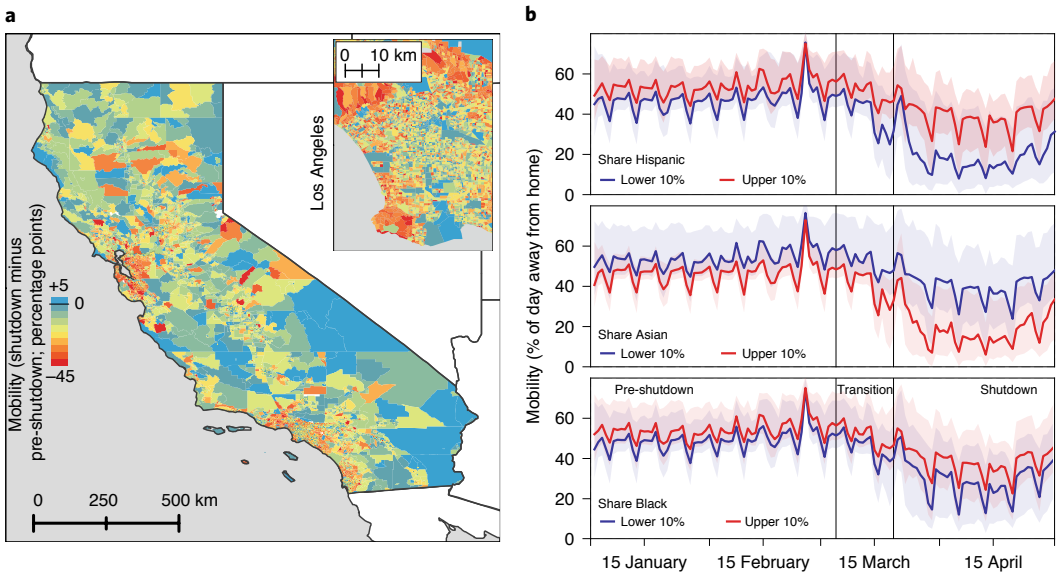


Fig. 2 | The COVID-19 'mobility shock'. a, Percentage-point difference in time spent at home pre-shutdown and during the shutdown at the CBG level in California, with an inset for the Los Angeles region. **b**, Mobility reductions for the median of the upper and lower 10% of three different population subsets. Shading indicates the 25th and 75th percentiles within each group. Vertical lines indicate the beginning and end of the transition (4 March 2020 and 19 March 2020) period excluded from our dynamic analysis. Average pre-/post-shutdown percentages are given in Supplementary Table 1.

Therefore, the relationship between the relative decline in local mobility and the relative decline in local air pollution gives insight into the pollution impacts of a block group's own economic activity. Figure 3b and Supplementary Table 4 show that residents in lower-income neighbourhoods reduced their mobility less than those in richer neighbourhoods during the shutdown period. Combined with the fact that lower-income areas experienced a larger drop in $PM_{2.5}$ concentrations, this finding suggests that local activity is not the primary driver of disparate exposures across the income gradient in California.

To further probe potential heterogeneity in the magnitude of shutdown impacts, we examine exposure changes across neighbourhood demographic gradients, with and without accounting for various local characteristics (Fig. 3c,e and Supplementary Tables 2 and 3). We identify substantial racial and ethnic disparities in air-quality improvements, even when accounting for income, road and population density and very fine-grained differences in weather patterns over space and time that strongly affect surface pollutant concentrations (Methods and Supplementary Information). We first examine the gradient for all non-White populations (that may also be Hispanic) and then decompose this group into the three largest racial and ethnic subgroups in the state. A ten-percentage-point increase in the non-White population share of a census block is associated with a 0.26 $\mu g\,m^{-3}$ reduction in $PM_{2.5}$ concentration after the shutdown. This falls to about 0.23 $\mu g\,m^{-3}$ once we include local mobility and allow for heterogeneous effects of the shutdown in terms of income, road density and population density (mobility impacts are shown directly in Fig. 3d and Supplementary Table 4). The decomposition reveals similar estimates for Hispanic and Asian populations, where we find reductions in $PM_{2.5}$ concentrations of 0.29 and 0.23 $\mu g\,m^{-3}$ per 0.1 increase in population share, respectively. We interpret this as evidence that in-person economic activity places a disproportionate pollution burden on non-White (and specifically Hispanic and Asian communities), only about a seventh of which is explained by differences in incomes and other location characteristics.

Hispanic and Asian are the two largest racial and ethnic minority groups in the state, making up about 39% and 16% of the population, respectively. While they share some similarities in historical inequitable treatment, there are several major differences in the socioeconomic attributes of the two groups. Acknowledging that we necessarily aggregate diverse subpopulations within racial and ethnic groups[36] (Supplementary Information), Asian Californians are predominately concentrated in urban areas and have on average higher incomes and education, whereas Hispanic populations are more skewed towards rural areas and have on average lower incomes and education.[37] Moreover, as described, the two groups had different baseline exposures and opposite average mobility responses to the shutdown. Despite these large circumstantial differences, their disproportionate exposure to economy-scale pollution is substantially similar, providing strong, albeit indirect, evidence of the influence of systemic racism in the mechanisms and institutions responsible for pollution control.

We do not find statistically significant pollution reductions associated with increased Black population share. That is, while the shutdown economy became more equitable in its pollution distribution vis-a-vis Hispanic and Asian communities, the same was not true for Black neighbourhoods, where substantial baseline pollution gradients remained unchanged. This may be in part statistical—the overall Black population share is around 7% and there are relatively few majority Black CBGs in the state (Fig. 1f)—but it also suggests that the in-person economy is not the main driver of pollution disparities for Black communities in California.

The findings from surface air-quality data are largely consistent with results from an analogous set of models using weekly satellite-derived NO_2 concentrations as the outcome, although some small differences between the two reflect both coverage discrepancies and the distributions of $PM_{2.5}$ and NO_2 sources in the state (Extended Data Fig. 4 and Supplementary Tables 6 and 7). The $PM_{2.5}$ results are also robust to consideration of sub-regions of California, for example, excluding Los Angeles, the Central Valley or both (Extended Data Fig. 5), suggesting that the findings are not driven by the seasonality of pollution, different pollution sources, demographics or unique airshed dynamics of these key regions. For both pollutants, the importance of accounting for fine-grained weather patterns is evident from the difference (for example, in Fig. 3

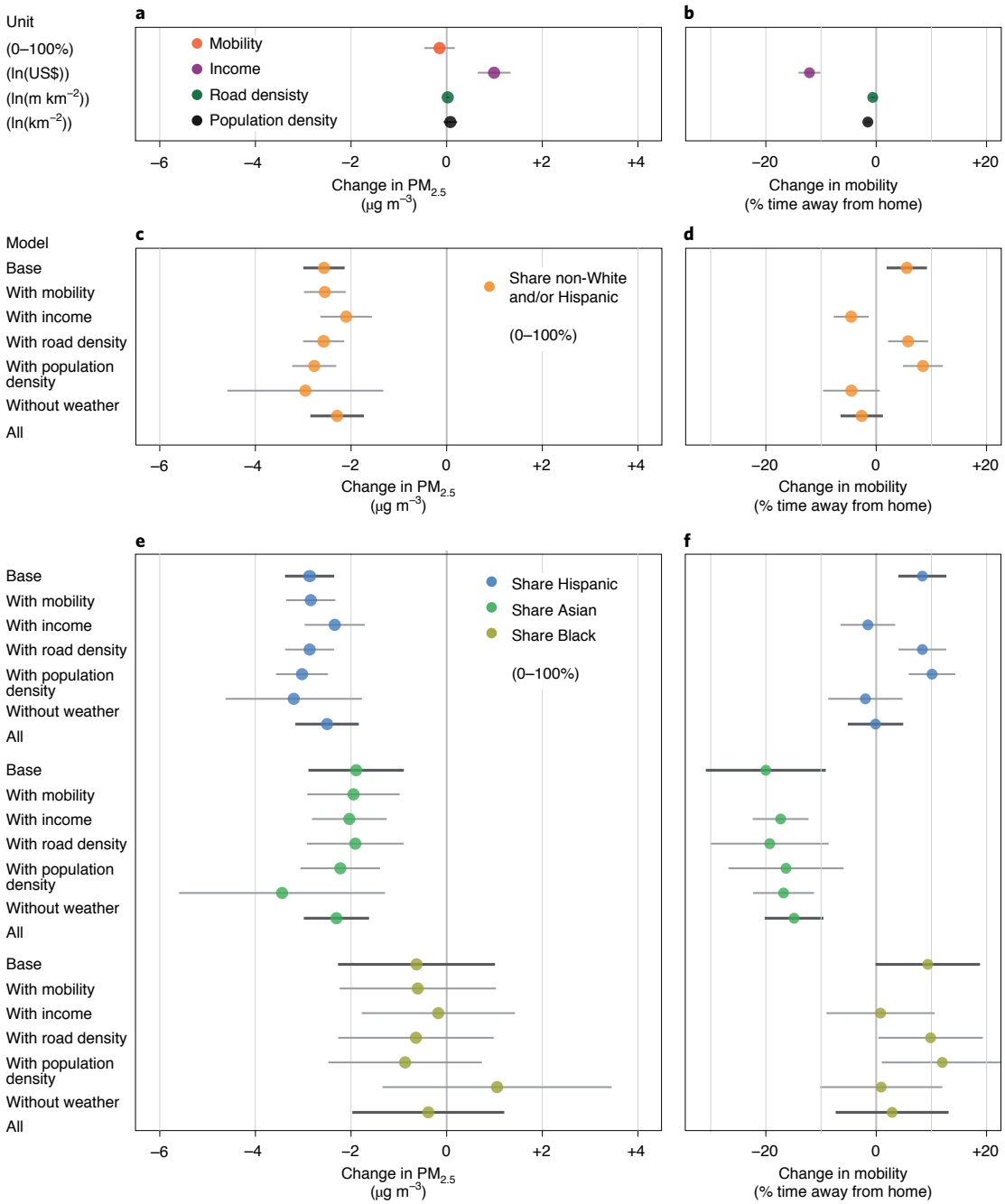


Fig. 3 | Impact of the economic shutdown on (left) $PM_{2.5}$ concentrations and (right) mobility. Points show heterogeneous changes across CBG characteristics estimated from difference-in-differences models, along with 95% confidence intervals. Intervals that include zero indicate that there was no differential reduction in exposures across the given gradient. **a**, Changes in daily $PM_{2.5}$ concentration across the shutdown estimated for various socioeconomic variables. The coefficient for mobility is the estimated difference between 0 and 100% of time spent at home; the coefficients for (ln) income, road and population density each represent the impact of an approximate doubling for each variable. **b**, Similar estimates with mobility as the dependent variable. **c**,**e**, Changes in $PM_{2.5}$ concentrations over the shutdown period across different racial and ethnic population shares, estimated with different physical and socioeconomic control variables (labels on left). The coefficients correspond to the expected changes between 0 and 100% population share at the CBG level. See Supplementary Tables 2 and 3 for values. **d**,**f**, Similar estimates, but with mobility as the outcome instead of $PM_{2.5}$. Values are given in Supplementary Tables 4 and 5. All four panels compare the post-shutdown difference from 2020 to 2019 to the pre-shutdown difference to account for seasonality. In addition, estimates were weighted to reflect the distribution of incomes, population shares and other location characteristics across all block groups in California and correct for the endogenous sampling of ground station locations (Extended Data Fig. 2b, Methods and Supplementary Information). The 'Base' model includes CBG and day-of-year fixed effects, as well as weather controls; other models incorporate the noted controls, or exclude weather, and 'All' includes everything.

and Extended Data Fig. 4) between estimates from our full model (All) and a model that includes all controls except weather ('w/o weather'). Prevailing weather patterns (Methods) that potentially transport pollution do account for some of the exposure disparities observed, with some variation by region and pollutant, but do not fully explain the observed patterns.

Discussion

In this Article, we provide new causal estimates of unequal air pollution exposure reductions experienced during California's COVID-19 economic shutdown. Because these reduction disparities are associated with widespread economic curtailment, they point to systemic racial and ethnic bias in the status quo generation and control of air pollution from the state's in-person economy. While this finding is robust to various specifications and data subsets, and is consistent across surface- and satellite-based data, our analysis nevertheless requires some contextualization and care in interpretation.

Importantly, while we note that exposure disparities are not explained by local mobility, the ability to fully distinguish local and non-local economic activity is limited, and representative spatial scales of local versus non-local may vary (for example, geographically, culturally or seasonally). We additionally note that while we focus on the non-local drivers of exposure disparities, local mobility-related pollution generation may nevertheless be caused by structurally unjust policy in other sectors (for example, housing or transportation). More broadly, it is important to recognize that contemporary and historical biases in other policy areas can lead to disparate average exposures, even if environmental policy surrounding the in-person economy were unbiased. This may be what explains our finding of higher average pollution exposures, but no disproportionate air-quality benefit from the COVID-19 shutdowns, for Black communities in California.

Our analysis consistently identified that lower-income communities in the state are disproportionately affected by pollution from the in-person economy. While we primarily employed income as a control, this income disparity represents an important concern in and of itself and presents policy challenges that are unique from those associated with combating institutional racism. California has one of the highest rankings for income inequality among US states[37], and our findings provide additional evidence that wealthier communities both are able to buy environmental quality (for example, via higher housing prices that embed air quality) and can afford to stay at home more fully during a pandemic.

Our empirical results complement a growing body of literature that uses chemical transport models (or reduced complexity models) to estimate pollutant exposures and map them to local socioeconomic and demographic characteristics. Importantly, such studies have been instrumental in identifying that a vast array of pollution sources contribute to baseline exposure disparities[15]. While these tools have become ever more powerful and accurate, and have the benefit of full coverage (compared with sparse monitoring networks), they do require accurate emissions inventories as inputs. Such inventories have rapidly improved in temporal resolution for long-lived greenhouse gases (for example, ref. [21]) but remain notoriously uncertain for air pollution, especially over short timescales and under abnormal economic conditions[38]. Our analysis strategy based on high-frequency observations of actual ground-level (or atmospheric column) pollution does not require emissions inventories and is thus well suited for understanding short-run changes in a way that modelling studies would be unable to capture.

Nevertheless, statistical studies like ours require accurate and unbiased characterization of the system under study and have their own shortcomings. For example, we cannot illuminate some of the more specific mechanisms of shutdown-induced variation in air pollution, such as whether being near to and downwind from a major road is more likely for ethnic/racial minorities[39,40]. A key point of contrast to modelling studies is that we do not explicitly account for individual point source emissions or wind, but instead use areal road density summaries (Methods), and detailed temperature, precipitation and relative humidity controls (see Extended Data Fig. 6), to capture much of this variation. Because our analysis focuses on differences within census blocks over time, the average influences of these and other unobserved factors are taken into account. Still, we cannot rule out that some of our measured effects may be driven by either variations in emissions or meteorological conditions that are correlated with both the demographic characteristics of a neighbourhood and the COVID-related shutdown. Future studies could focus on more thoroughly accounting for natural seasonal swings in air pollution and the full range of its spatial and temporal variability through the inclusion of more years of data[17]. This was not possible here due to the short timescale of PurpleAir and Sentinel data availability; however, our use of 2019 as a comparison for 2020, and the similarity of estimates made with pre- and post-shutdown 2020 data alone (Supplementary Table 8), underscore that the exposure disparities we estimate are not likely to be systematically changed by inclusion of more years of observations.

Beyond revealing disparities in pollution exposure generated by the in-person economy, our analysis also highlights inequality in local air pollution information. As we show, monitor placement matters for detection of exposure gradients. CARB recently re-focused air-quality monitoring in designated environmental justice communities[41], which has resulted in a more accurate sample of the state's Hispanic population distribution than (for example) PurpleAir. The PurpleAir monitoring network, established through the individual purchase and placement of (relatively) low-cost sensors, shows that citizen-science networks can be exceedingly useful for increasing the amount of public data but that those networks are unlikely to be optimally placed for addressing environmental justice questions (for which sensors are needed that accurately reflect the spatial distribution of all subpopulations). PurpleAir sensors also require care in correcting biases compared with monitoring-grade instruments[42]. On the public monitoring side, local governments that are responsible for choosing locations of sensors mandated by the Clean Air Act (that is, CARB) may also strategically place sensors to improve their chances of being in attainment[43,44]. This strategic placement reduces the ability of those sensor networks to detect environmental injustice[45] and makes adjustments for sampling bias, such as those proposed here, relevant for the larger literature (Supplementary Information). In addition, while we show that satellite-based observations can be helpful in understanding the spatial distribution of pollutants that underlies ground-based monitoring network samples, satellite data are spatially coarse compared with the average CBG and are more limited temporally (Supplementary Information). As such, satellites may not be able to replace ground-based monitoring when high spatial and temporal resolution are required. While a more spatially dense ground measurement network would vastly improve the ability to detect and address environmental injustice, reliability, cost, distribution and data curation would need to be considered in choosing a scale-up strategy[46,47].

Finally, while our analysis documents that the generation and control of pollution from California's in-person economy disproportionately and negatively affects the state's largest racial and ethnic minority communities, it also has potential applications in environmental policymaking. The United States has a multidecadal history of justifying environmental regulation through the use of an efficiency-based net benefit criterion (the simple objective that regulatory benefits exceed costs)[48,49]. Many state and federal entities additionally mandate that regulatory impact analysis include assessment of impacts to disadvantaged and vulnerable groups (for example, refs. [49,50]), and recently this has been identified as a major environmental policy priority[51]. It is difficult, however, for equity considerations to obtain equal footing with efficiency criteria when best practices for benefit–cost analysis are strictly codified[52], but there is no standard assessment criterion for justifying interventions that mitigate inequities[53]. For race- and ethnicity-based equity considerations, our methodology suggests that a net equalization criterion for environmental regulation could be constructed as follows and utilized in conjunction with benefit–cost analysis:

$$\text{Net Equalization} = \Delta\text{Exposure}_{\text{non-White}|\text{Income}} - \Delta\text{Exposure}_{\text{White,non-Hispanic}|\text{Income}} \quad (1)$$

In this framework, the pollution reduction effect we identify as associated with the COVID-19 shutdowns had a net equalizing effect (although absent inclusion of public health benefits, uniform reduction of regional economic activity would be unlikely to satisfy the net benefit criterion). (As in our analysis, controlling for income would be critical for any equalization criterion, not just because income can be a confounding factor in identifying environmental racism, but also because the policy mechanisms by which societies might address income-dependent environmental injustice are different from those for addressing environmental racism.) When systemic bias is driving adverse outcomes, public policy intervention focused narrowly on addressing market failures may eventually result in reversion to inequality[54]. Revising regulatory impact analysis protocols to include a clear, quantitative equalization standard would instigate a shift in focus of environmental regulation beyond efficient reduction of externalities.

Methods

$PM_{2.5}$ data. Surface station measurements of $PM_{2.5}$ were downloaded from publicly available PurpleAir and CARB databases (Extended Data Fig. 7). We downloaded all outdoor PurpleAir data available (1,891 individual stations) for January–April 2019 and 2020. PurpleAir sensors are relatively inexpensive and are usually privately owned, but much of the data is publicly available. The quality of these data are lower than that of data from regulatory monitors, but PurpleAir sensors provide unprecedented spatial coverage. Most PurpleAir sensors contain two Particulate Matter Sensor 5003 sensors (Plantower), which measure particle counts in six size bins. Counts are converted to $PM_{2.5}$ using two proprietary conversions, one intended for indoor use and the other for outdoor use; we use the outdoor conversion as recommended and tested by ref. [55]. We also average the two sensors (when available) and exclude days when daily $PM_{2.5}$ measurements within the same unit differ by at least 5 $\mu g\,m^{-3}$ and at least 16% (ref. [42]). In limited field evaluations, PurpleAir sensors have been shown to have strong correlations with high-quality sensors[55–58]. Ref. [55] also proposed a correction for effects of relative humidity, which we do not apply in part because we consider daily data rather than sub-daily. We do, however, apply a correction developed by the US Environmental Protection Agency, which tends to slightly over-correct the high bias of the PurpleAir instruments, meaning the presented results from these sensors are conservative (Supplementary Figure 2)[42].

We retrieved (1 May 2020) all hourly CARB $PM_{2.5}$ data in California available for January–April 2019 and 2020 using CARB's Air Quality and Meteorological Information System (150 individual stations). Professional instruments and oversight, particularly for calibration, provide higher confidence in the data quality of the CARB sites. However, there are an order of magnitude fewer CARB stations than PurpleAir sensors in California, which means studies using the government data are statistically limited by a relatively small sample size. Unlike PurpleAir sensors, CARB sites often offer a wide variety of air pollutant measurements, although we use only hourly $PM_{2.5}$ aggregated to the daily mean. For both CARB and PurpleAir data, days with mean $PM_{2.5}$ equal to zero or greater than 500 $\mu g\,m^{-3}$ are removed as outliers. Sites for which we remove more than 10% of data are excluded from the entire analysis. Sites with less than 80% data coverage during our study period are also excluded. For models that require 2019 and 2020 data, we apply these requirements to both years independently. This quality filtering removed 5.9% of daily CARB $PM_{2.5}$ data and 11.4% of daily PurpleAir data, resulting in data from 1,664 individual stations (119 CARB and 1,545 PurpleAir). However, only 830 of those (106 CARB and 724 PurpleAir) include data for 2019 and 2020 for the pre-shutdown and shutdown period and were therefore used in our empirical statistical analysis.

NO_2 data. We used the Copernicus Sentinel-5 Precursor Tropospheric Monitoring Instrument (TROPOMI, version 1.03.02) offline tropospheric NO_2 column number density[59] for mean NO_2 concentrations of the developed areas of each CBG. TROPOMI has a resolution of 0.01 arc degrees. Data were collected for January–April 2019 and 2020 and only for developed areas according to the US Geological Survey National Land Cover Database 2016[60]. For this study, all data were prepared using the Google Earth Engine Python API[61] and formatted as weekly means for each CBG. Weekly means were chosen to counteract the high frequency of missing data, particularly in northern California (Extended Data Fig. 8).

Climate data. For temperature, precipitation and relative humidity, we relied on the Gridded Surface Meteorological dataset[62]. This dataset provides daily information at 4 km resolution across the continental United States. For this study, data were aggregated in Google Earth Engine[61] in its original daily frequency (for $PM_{2.5}$ analysis) and as a weekly mean (for NO_2 analysis) for each CBG. The weekly mean data were aggregated only for developed areas according to the US Geological Survey National Land Cover Database 2016[60].

Mobility data. We use SafeGraph's Social Distancing Metrics[63], which were made available for research as part of the company's COVID-19 response and have been validated elsewhere (for example, ref. [64]). SafeGraph collects and cleans GPS pings from about 45 million mobile devices. The data are available daily at CBG resolution and are close to a random sample of the population. Our primary measure of mobility is not social distancing but rather the percentage of time spent away from home. We calculate this measure on the basis of the median time (in minutes) that a device was observed at its geohash-7 (about 153 m × 153 m) home location, which SafeGraph determines as the night-time residence of the device in the six weeks before. The data cover the entire period of observation from 1 January 2019 until the end of April 2020.

Demographic data. We downloaded CBG-level demographic information from the US Census Bureau 2018 5 yr ACS for all CBGs in California using the tidycensus package[65] for the R programming environment[66] (29 June 2020). Demographic features included ACS sample-based CBG-level estimates of population count; White race count (alone or in combination with one or more other races), or 'White'; Black or African American race count (alone or in combination with one or more other races), or 'Black'; Asian race count (alone or in combination with one or more other races), or 'Asian'; Hispanic or Latino origin (of any race) count, or 'Hispanic'; and median income. The other census race designations (American Indian or Alaska Native; Native Hawaiian or Other Pacific Islander) represent a substantially lower share of the California population and were therefore excluded from our analysis due to small sample sizes. The CBG-level 'share' of these groups was calculated by dividing the CBG count by the CBG population. Population density was calculated as the CBG population divided by the area of the CBG. For the aggregate comparison, we compute the share of the non-White population that may be Hispanic as one minus the share of Whites that do not also identify as Hispanic. Because Hispanic is a separate designation from race in the ACS (that is, those categorized as Hispanic may also be of any race), we evaluated how distinct Hispanic was from race variables of interest (Supplementary Fig. 1). On average, less than 1% of those identified at the CBG level as Hispanic were also identified as Black or Asian; 61% of Hispanic were White. Thus, Hispanic is effectively distinct from Asian and Black categorizations, and we consider Hispanic, Asian and Black designations to be unique demographic indicators in our model. The baseline reference group in the more detailed comparison contains all other races and ethnicities and therefore consists almost entirely of people who identify as non-Hispanic White.

Geographic data. We calculated road density ($m\,km^{-2}$) using The Global Roads Inventory Project (GRIP4)[67] vector dataset for North America. The GRIP4 dataset harmonizes global geospatial datasets on road infrastructure, including road features that can be categorized as highways, primary roads, secondary roads, tertiary roads and local roads. It is consistent with primary and secondary road classifications from the US Census TIGER/Line shapefiles for roads. To calculate road density for each CBG, we summed road lengths within the area of the CBG and divided by the area of the CBG. Calculations were done using the sf package[68] in the R programming environment[66].

Study period and design. We consider three periods between 1 January and 30 April in 2019 and 2020. The first period is 'pre-shutdown,' followed by a 'transition' and then 'shutdown.' The transition is defined as the period between the statewide emergency declaration (4 March 2020) and the statewide stay-at-home order (19 March 2020). The mobility data demonstrate that activity declined throughout this period (Fig. 2). This is consistent with recent literature that shows that fear was a potent driver of the decline in mobility and often pre-empted county-wide legal restrictions[69]. The shutdown period begins with the stay-at-home order and ends at the end of our study period. We exclude the transition from the analyses described below. This precludes the use of variation in treatment timing to assist with causal identification. Instead, we proceed by using the interaction between the shutdown and racial or ethnic composition of CBGs as the treatment, allowing us to directly estimate the additional pollution burden of economic activities that were halted during the shutdown on block groups with certain demographic compositions. This is standard practice, referred to as 'generalized difference in differences' (see Supplementary Information for details). In our case, there is no group that remains untreated and no variation in treatment timing but heterogeneity in treatment intensity.

Empirical strategy. In our statistical analyses, our main dependent variable is an (average) measure of air quality ($PM_{2.5}$ or NO_2) in CBG i at day (or week) t. We focus on block groups to minimize the influence of aggregation bias or the 'ecological fallacy'[70] and study temporal variation in air quality across block groups using a difference-in-differences design. Difference-in-differences methods are commonly used to study causal effects in economics[71]. Our objective is to estimate

the heterogeneity in the effect of the shutdown across different communities rather than the overall effect of the shutdown. We focus on the racial and ethnic composition of CBGs using population shares of California's three biggest racial and ethnic minority groups (Hispanic, Asian and Black). We first establish the existence of air pollution exposure reduction inequities and then include a rich set of controls to assess the racial and ethnic inequities that remain after accounting for differences in mobility, income and location[72–74].

A key concern is that differences in air quality are driven by interannual cycles in pollution and particle concentration that are unrelated to the shutdown[75]. We address this issue in several ways. First, we subtract observed air quality in 2019 from the 2020 value. All annual differences, after aligning the weekdays, are denoted by $\tilde{y}_{it} = y_{it} - y_{i,t-364}$. Second, we flexibly control for local weather conditions in 2020 and 2019 (see Extended Data Fig. 6 and Supplementary Information for details on selection of weather controls). Finally, we allow for a rich set of day or week fixed effects that capture the remaining differences in synoptic scale weather patterns. Putting all this together, we use Ordinary Least Squares to estimate the heterogeneous effect of the shutdown using variants of the following specification:

$$\tilde{y}_{it} = \sum_k \gamma_k \left(d_t \times x_i^k \right) + \theta \tilde{M}_{it} + f^{2020}(T, \mathrm{RH}, P)_{it} + f^{2019}(T, \mathrm{RH}, P)_{it} + \lambda_t + \mu_i + e_{it} \quad (2)$$

where d_t is an indicator for the post-shutdown period, x_i^k are the population shares of the three minority groups studied here or other (relatively) time-invariant location characteristics k that vary at the CBG level, $\tilde{M}_{it}$ is the annual difference in mobility on day t in CBG i (constructed analogously to $\tilde{y}_{it}$), $f^{2020}(\cdot)_{it}$ and $f^{2019}(\cdot)_{it}$ approximate the nonlinear response of pollution and particle concentration to weather with interacted fixed effects for each decile of temperature (T), relative humidity (RH) and precipitation (P) in the corresponding year, λ_t are day (or week) fixed effects, μ_i are CBG fixed effects (capturing changes in the number of stations in a block group across years), and e_{it} is an error term. We cluster all standard errors on the county level, as stay-at-home and local health ordinances are spatially and temporally correlated at this level.

We are interested in γ_k, which captures the heterogeneous impact of the shutdown across different demographic gradients (see Supplementary Information for a derivation). The baseline effect of the shutdown, d_t, is not statistically identified without the assumption of constant seasonal emissions patterns, as that baseline effect occurs simultaneously for all block groups in California (Extended Data Fig. 9) and is therefore collinear with seasonal shifts in air quality that are unrelated to the COVID-19 shutdowns. Heterogeneous impacts are identified by variation among block groups experiencing a COVID-19 shutdown-related air pollution change only and can be interpreted as the effect of the shutdown relative to some baseline. This requires a weaker assumption: that the interannual differences in pollution are not simultaneously correlated with the timing of the shutdown and the spatial distribution of race and income. Our weather controls make this a plausible assumption by accounting for systematic differences in temperature, humidity and rainfall across different parts of the state. We interpret the coefficient on $d_t \times$ %Hispanic as the difference in pollutant concentration for a block group that is 100% Hispanic relative to a block group that is 0% Hispanic. Differences in air pollution concentrations across the shutdown window are typically reductions in air pollution, which we consider to be equivalent to the expected increase after a return to 'business-as-usual' conditions. We address the representativity of monitor placement in both CARB and PurpleAir networks by comparing estimates based on each network alone, both networks combined, and both combined with weights derived to make the sampled locations (that is, CBGs with monitors) match state demographics (see Extended Data Figs. 2b and 10, and Supplementary Information for details).

Software. All data processing and analysis other than acquisition and pre-processing of mobility information were done using the R programming environment[66] and the Python API for Google Earth Engine[61]. ArcGIS was used to make the maps in Fig. 1 and Extended Data Figs. 2 and 8, and Adobe Illustrator was used for final assembly of composite figures.

Reporting Summary. Further information on research design is available in the Nature Research Reporting Summary linked to this article.

Data availability

The pollution, weather and demographic data used in this project are all publicly available. PurpleAir data are accessible via public API, CARB data can be found at https://www.arb.ca.gov/aqmis2/aqmis2.php. Gridded NO_2 data (https://developers.google.com/earth-engine/datasets/catalog/COPERNICUS_S5P_NRTI_L3_NO2) and GridMet weather data (https://developers.google.com/earth-engine/datasets/catalog/IDAHO_EPSCOR_GRIDMET) are available via Google Earth Engine. Mobility data from Safegraph are available to academic researchers (https://www.safegraph.com/academics) but may not be reposted in raw format. GRIP4 road data are available at https://www.globio.info/download-grip-dataset, and ACS data were accessed via R using the tidycensus package. All publicly available raw data for this project can be found in our project dataverse (https://doi.org/10.7910/DVN/ZXVB7A), and processed and derived data can be found in our GitHub repository (https://github.com/jaburney/CA-COVIDEJ-2022). Finally, we have provided an online tool to facilitate exploration of the data at the CBG scale (https://sabenz.users.earthengine.app/view/covid-ej).

Code availability

Replication code is maintained in our GitHub repository (https://github.com/jaburney/CA-COVIDEJ-2022).

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Author contributions

K.S.H., P.P., J.A.B., M.C.L, S.A.B., L.C.S. and R.B. designed study. S.A.B., M.C.L., K.S.H., P.P. and R.B. prepared data and code for analyses; R.B. and L.C.S. ran statistical models. All authors interpreted results, prepared figures, wrote and edited the manuscript together.

Competing interests

The authors declare no competing interests.

Additional information

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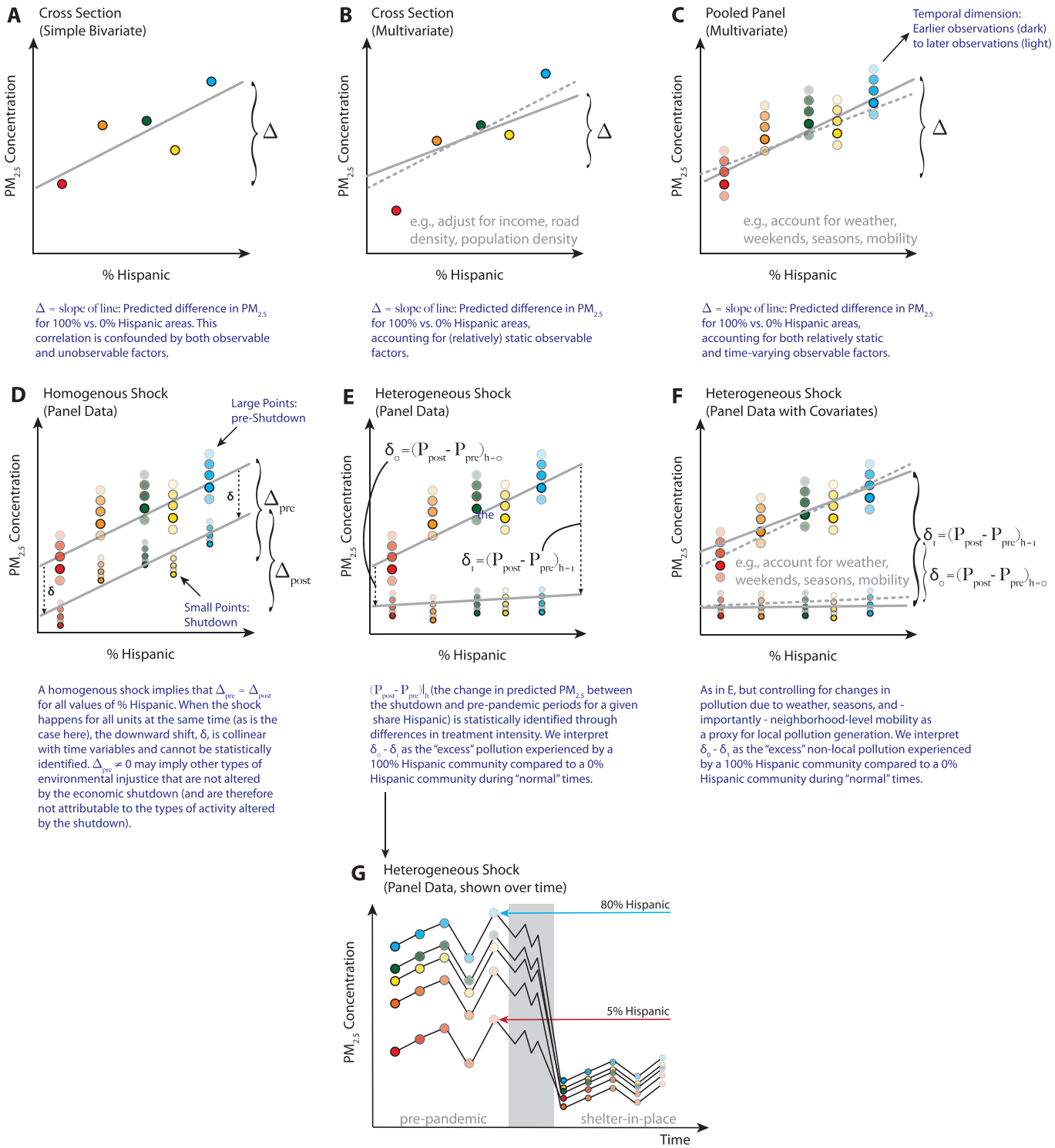
Correspondence and requests for materials should be addressed to Jennifer A. Burney.

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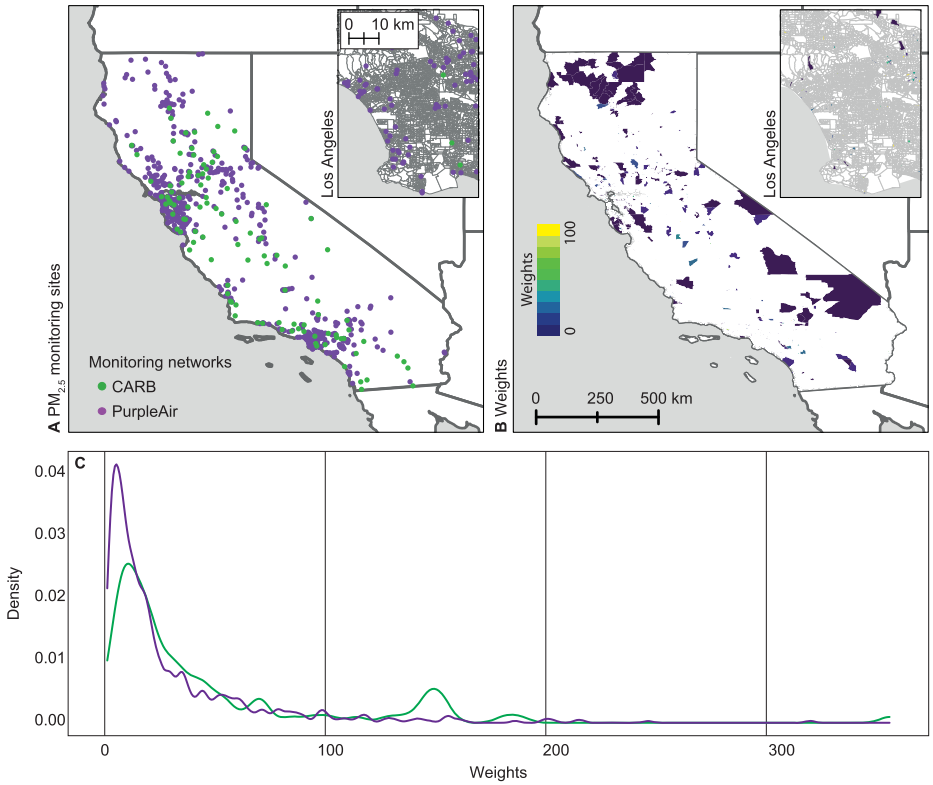
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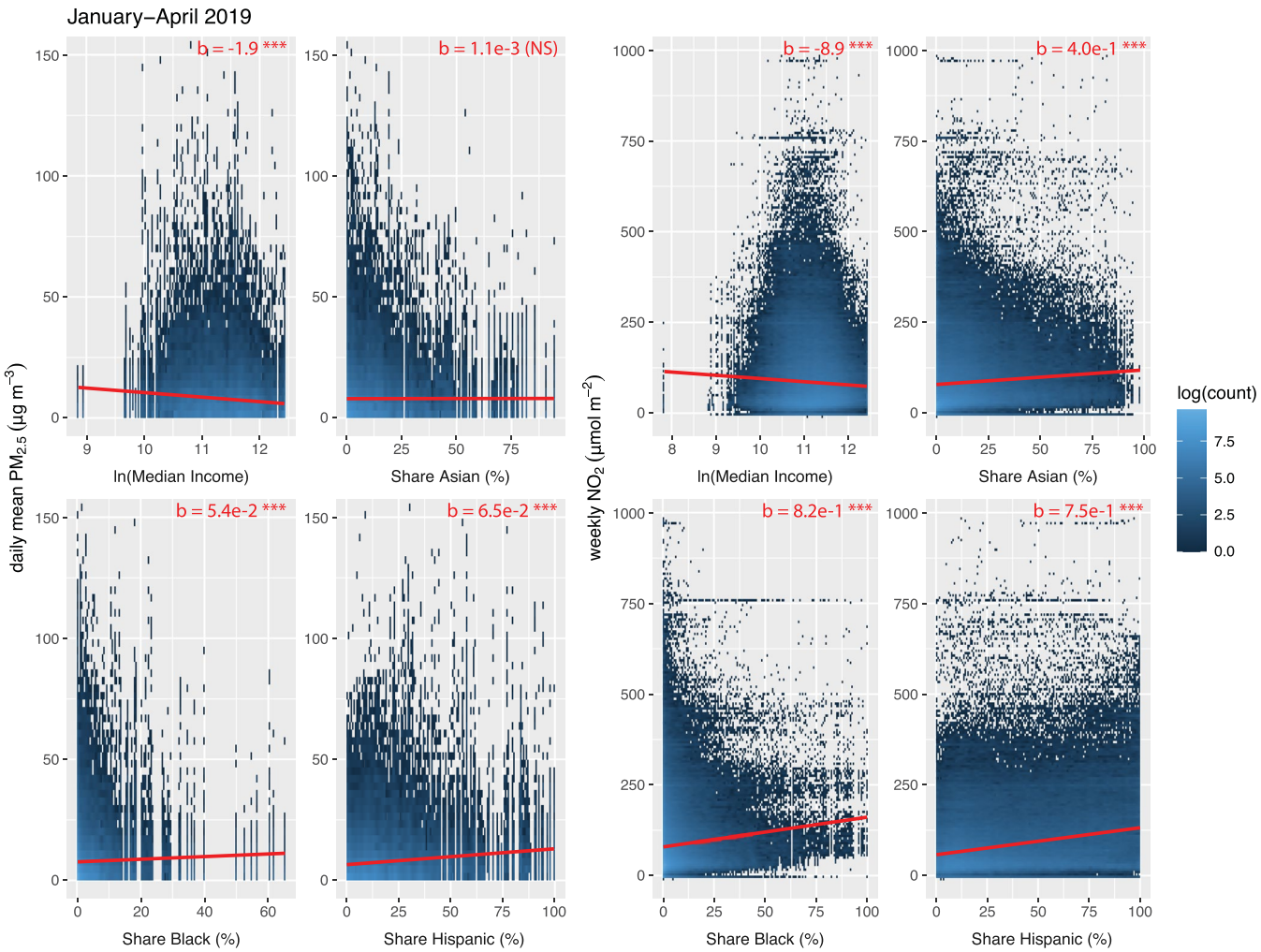
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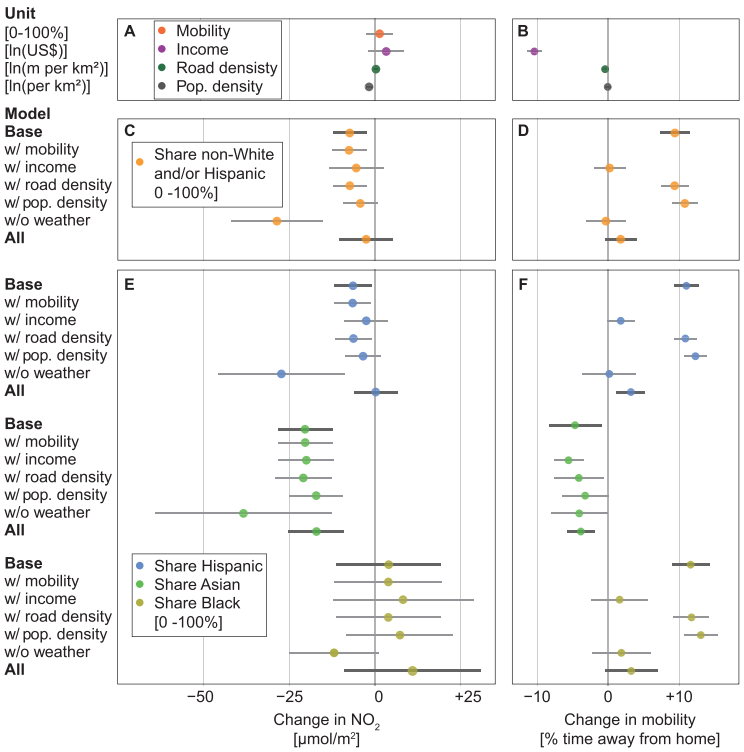
Extended Data Fig. 1 | Why the COVID-19 'shock' offers new insight into questions of environmental justice. For simplicity, imagine 5 communities across (for example) a state, represented by the five colors here. These locations each have a different racial/ethnic composition, represented here for simplicity in one dimension, as the share of the population that is Hispanic. Many observations of environmental injustice rely on cross-sectional analyses, either **A** without or **B** accounting for potential slower-moving confounds. **C** However, many high-frequency variables contribute to ambient pollution levels and might be correlated with geography and socioeconomic variables; panel analysis with repeat observations over time allows for inclusion of these types of covariates, and can thus account for the contributions that (for example) natural weather patterns make to exposure disparities. However, even a panel analysis is subject to potential confounding, and interpretation of residual exposure disparities as environmental injustice caused by the economy remains problematic. The COVID-19 economic shock creates a large perturbation that 'turns off' a portion of the economy, and thus reveals the footprint of pollution caused by that in-person economic activity. We test for whether this shock changes exposure gradients (that is, whether the shock looks like **D** or **E**, and as such whether the in-person economy is contributing to environmental racism. **F** The ability to account for mobility in this framework further allows the separation of very local activity from broader activity (see Supplementary Information Text). (For clarity, **G** shows the heterogeneous shock in time series).



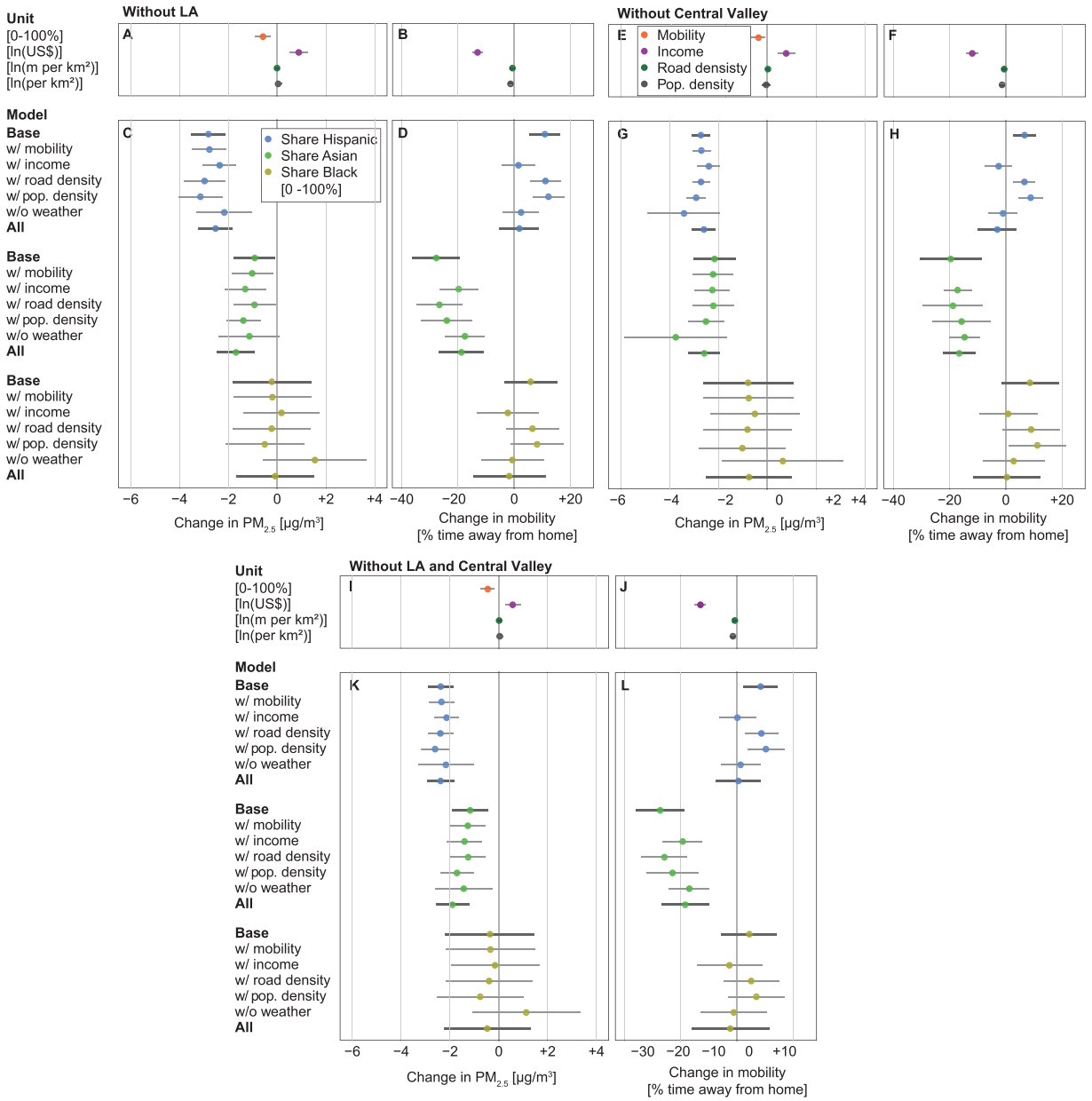
Extended Data Fig. 2 | $PM_{2.5}$ networks and weights. A Location of public (California Air Resources Board (CARB) and United States Environmental Protection Agency (EPA)) $PM_{2.5}$ monitors, as well as privately-owned PurpleAir $PM_{2.5}$ monitors used in this study. **B** Weights used in the model to better represent the Californian population. Each dot represents one census block group. **C** Distribution of weights generated by the raking process, across sensor types.



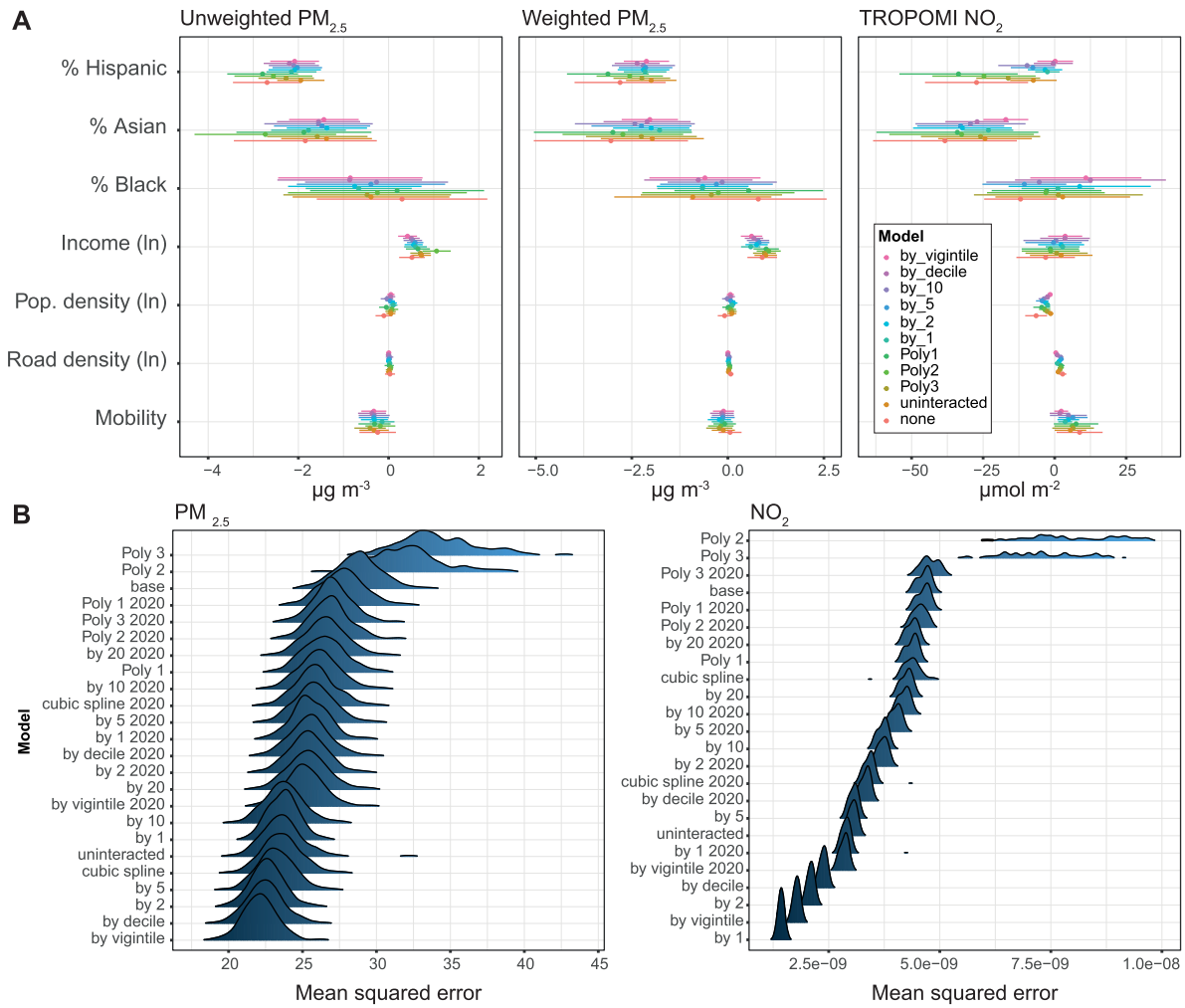
Extended Data Fig. 3 | Baseline associations between income, race, ethnicity and pollution exposure. Relationships between pooled January-April 2019 $PM_{2.5}$ and NO_2 observations and census block group demographics, without controlling for other sources of heterogeneity. The line represents the best linear fit. Red text shows slope of fit line, *** indicates p < 1e-3; NS = not statistically significant.



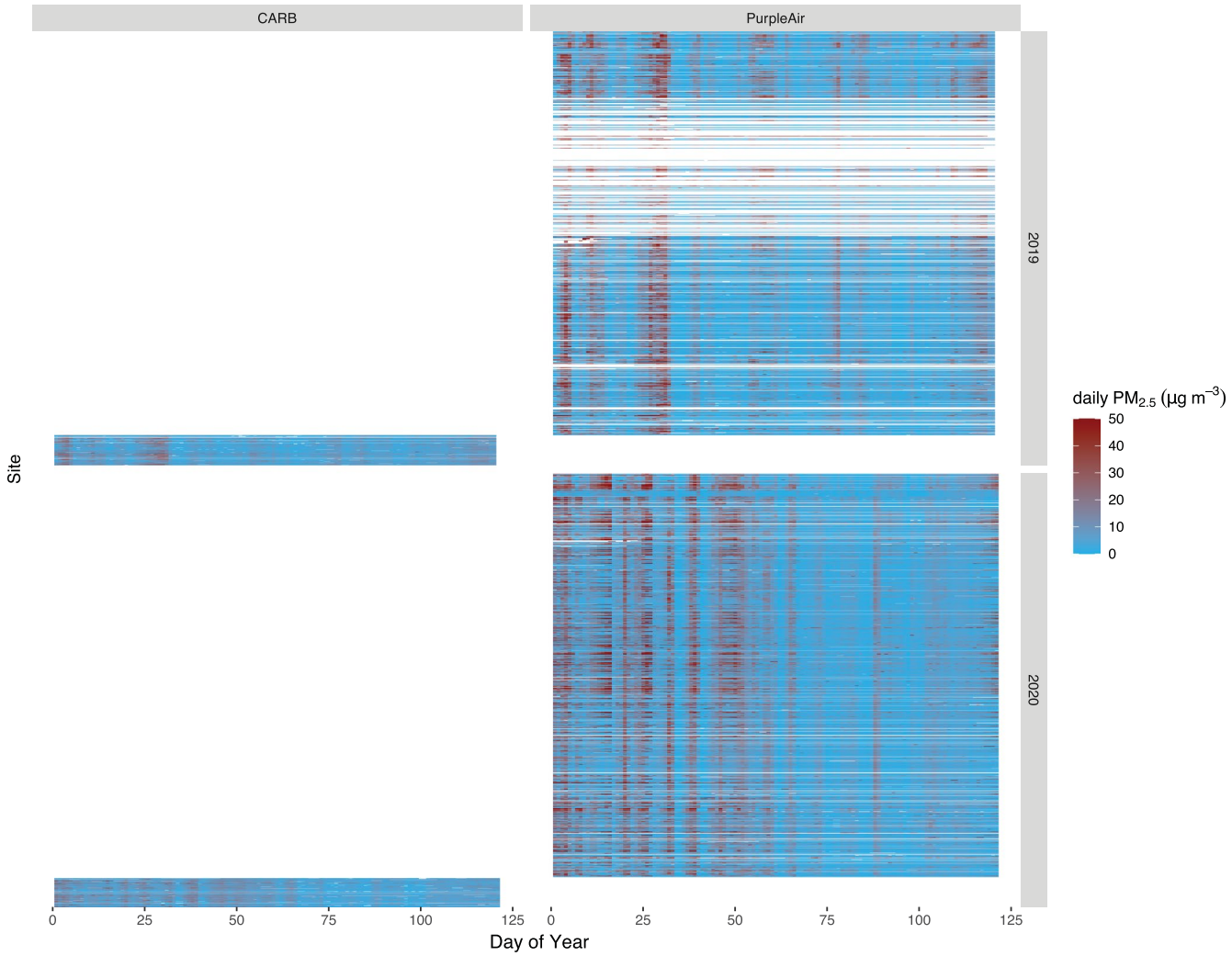
Extended Data Fig. 4 | Same as Fig. 3, but for weekly NO_2. Since NO_2 measurements are from the TROPOMI satellite instrument, they cover all census block groups in California. Qualitative differences between NO_2 estimates (A,C,E) and Fig. 3a,c,e thus represent a combination of coverage, and differences in $PM_{2.5}$ and NO_2 distributions. Differences in mobility between these estimates (B,D,F) and Fig. 3b,d,f are due to coverage differences (representing mobility in all census block groups here and mobility census block groups with Purple Air stations for Fig. 3) and weekly versus daily analysis. Values of the coefficients in parts A and C are given in Table S6 and part E in Table S7.



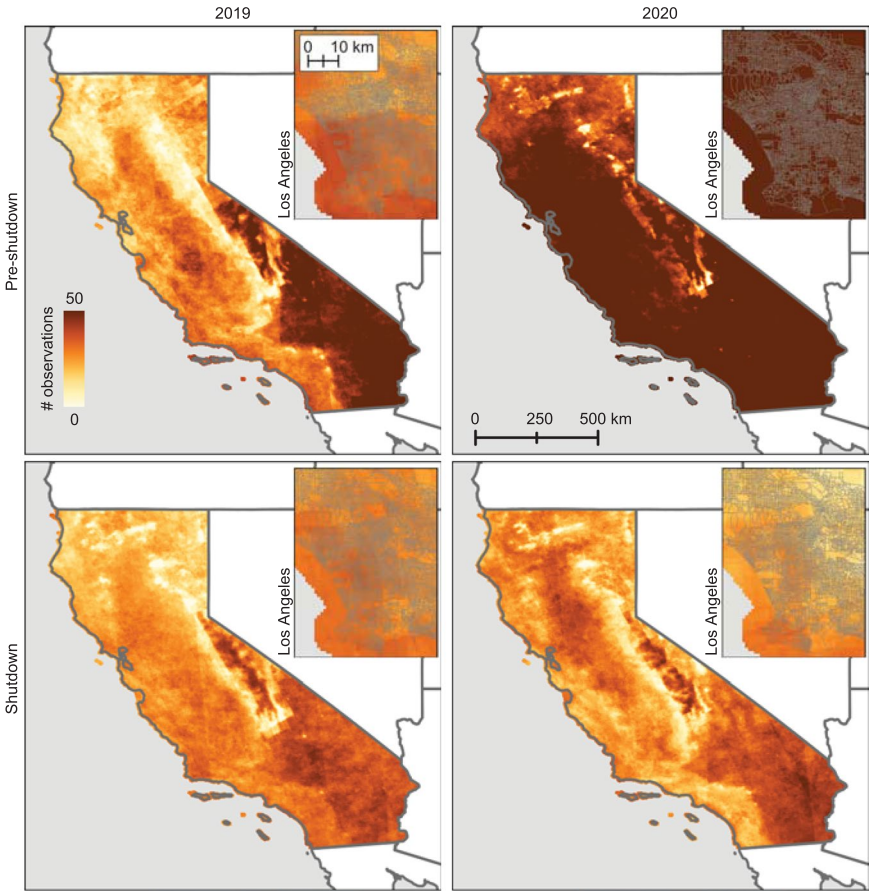
Extended Data Fig. 5 | Same as Fig. 3, but excluding Los Angeles County (A-D), the Central Valley (E-H) and both (I-L). There is no change in patterns when re-estimating our models without these regions, highlighting that climate or demographic differences in these key regions is not a key driver of the total observed differences.



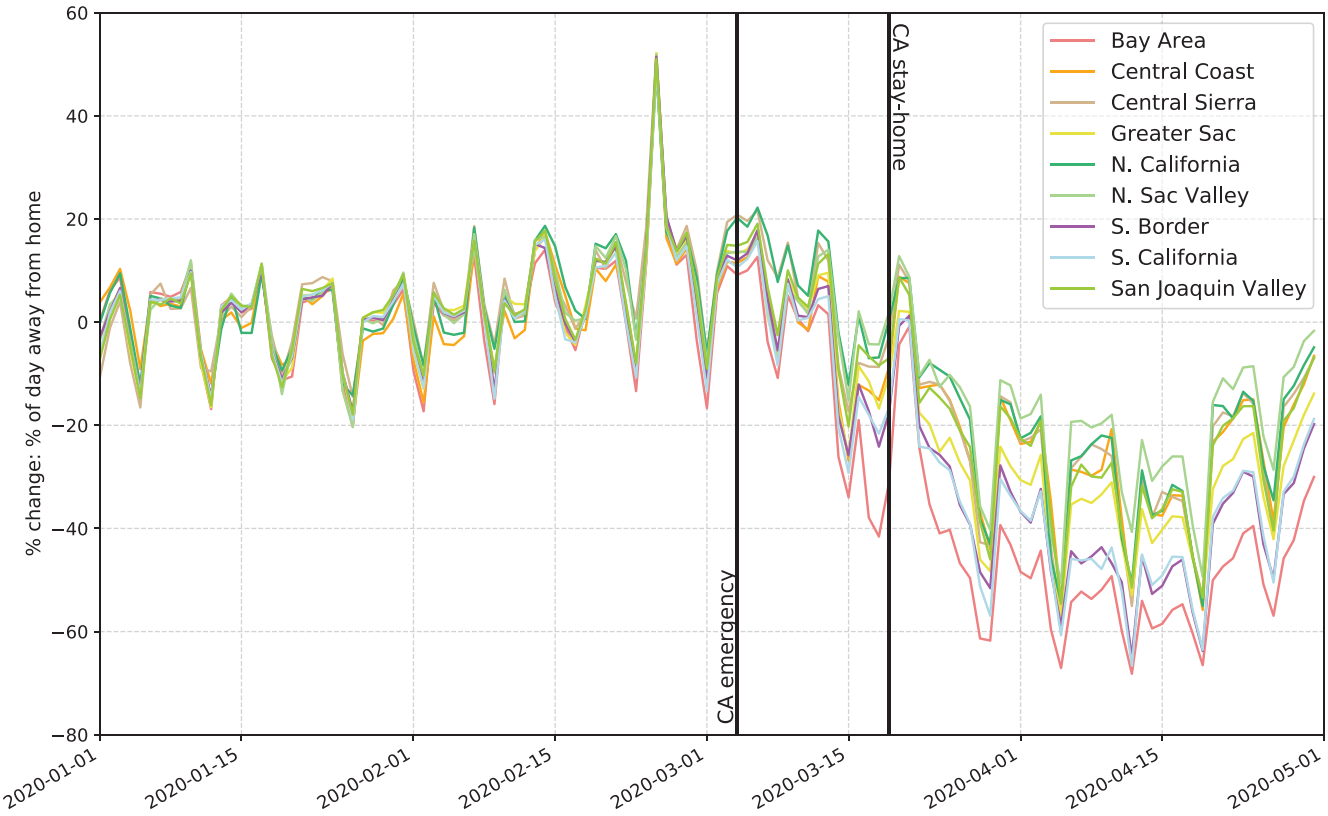
Extended Data Fig. 6 | Choice of, and sensitivity to, weather controls specification. A Sensitivity of main results (Fig. 3) to different functional forms of climate variables (temperature, precipitation, and relative humidity). **B** Mean squared error (MSE) of models fit with different functional forms of weather controls and no other covariates, cross-validated, for both $PM_{2.5}$ and NO_2 models (see Supplementary Information text ('Selection of weather controls') for additional details.). Tables S9-S10 show the MSE statistics for each specification, and the number of observations dropped due to unique weather controls values. We selected interacted vigintile fixed effects as the optimal structure for this analysis based on the combination of lowest MSE for $PM_{2.5}$ and very few dropped observations, even with full interactions of temperature, precipitation, and relative humidity bins.



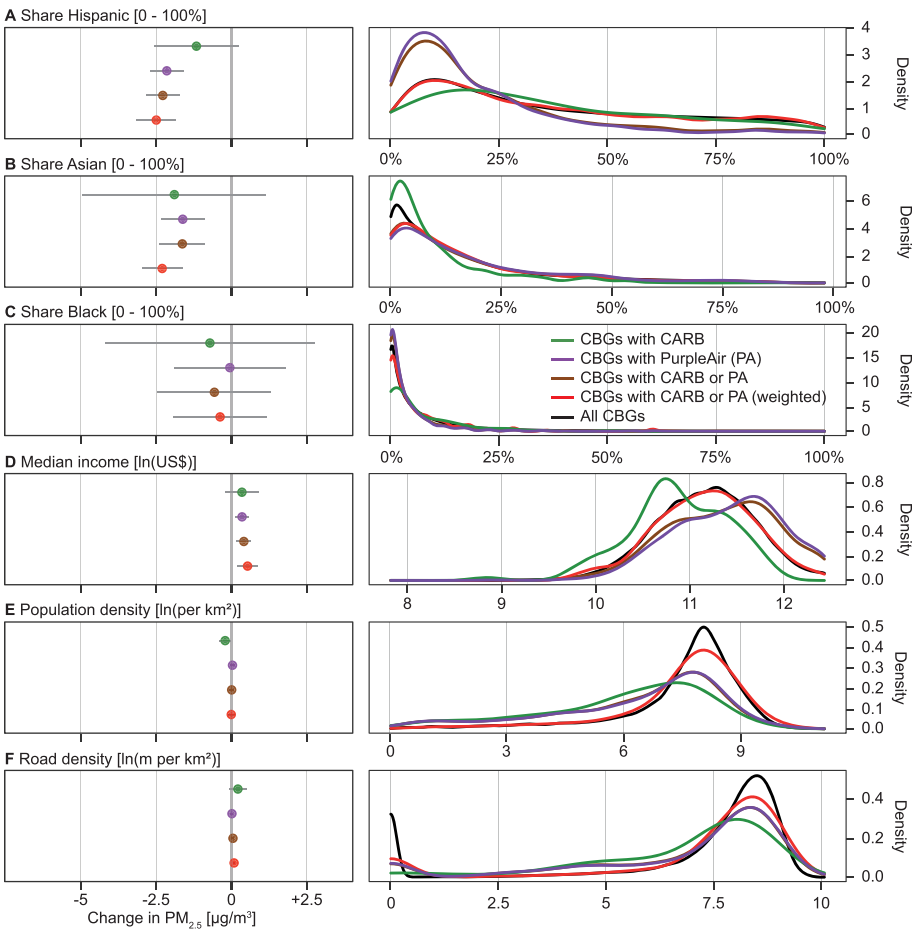
Extended Data Fig. 7 | Daily mean $PM_{2.5}$ concentration summary. Daily measurements from CARB and PurpleAir sensor networks during the study period, in 2019 and 2020, after quality control filtering.



Extended Data Fig. 8 | Map of the number of observations in the TROPOMI NO_2 product. For the time periods pre-shutdown and shutdown for 2019 and 2020 the numbers of observations are shown for each pixel (1 km resolution). Note that the pre-shutdown period is longer than the shutdown period.



Extended Data Fig. 9 | Regional mobility changes in CA. Percent change of mobility is shown for nine regions of CA relative to the mean mobility of each region in January 2020. The urban regions like the Bay Area, Southern CA, and the Southern Border show the largest mobility decrease during the shutdown. The onset of mobility decline occurred essentially simultaneously throughout the state.



Extended Data Fig. 10 | Monitor locations, weighting, and influence on impact estimates. The public (CARB) and private (PurpleAir) $PM_{2.5}$ sensor networks used in this study are not evenly distributed across the state, which affects how different census block groups contribute to estimated impacts. On the left we show post-shutdown concentration changes across various census block group gradients (as in Fig. 3), but estimated using different samples – the public CARB network only (green), the private PurpleAir network only (purple), both together but unweighted (brown), and both together and weighted (red). (These weighted estimates correspond to the estimates presented in Fig. 3.) The panels on the right show the representation of demographic and geographic features due to sensor placement within the different sensor networks. Compared to the distribution of these features by all census block groups in California (black lines), the distribution of census block groups with CARB or PurpleAir monitors can be quite different. The distribution of CARB and PurpleAir combined after weighting (red) matches the all-group state-wide distribution much more closely (see Supplementary Information for details).

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For all statistical analyses, confirm that the following items are present in the figure legend, table legend, main text, or Methods section.

n/a	Confirmed
☐	☒ The exact sample size (*n*) for each experimental group/condition, given as a discrete number and unit of measurement
☐	☒ A statement on whether measurements were taken from distinct samples or whether the same sample was measured repeatedly
☐	☒ The statistical test(s) used AND whether they are one- or two-sided *Only common tests should be described solely by name; describe more complex techniques in the Methods section.*
☐	☒ A description of all covariates tested
☐	☒ A description of any assumptions or corrections, such as tests of normality and adjustment for multiple comparisons
☐	☒ A full description of the statistical parameters including central tendency (e.g. means) or other basic estimates (e.g. regression coefficient) AND variation (e.g. standard deviation) or associated estimates of uncertainty (e.g. confidence intervals)
☐	☒ For null hypothesis testing, the test statistic (e.g. *F*, *t*, *r*) with confidence intervals, effect sizes, degrees of freedom and *P* value noted *Give P values as exact values whenever suitable.*
☒	☐ For Bayesian analysis, information on the choice of priors and Markov chain Monte Carlo settings
☒	☐ For hierarchical and complex designs, identification of the appropriate level for tests and full reporting of outcomes
☒	☐ Estimates of effect sizes (e.g. Cohen's *d*, Pearson's *r*), indicating how they were calculated

Our web collection on statistics for biologists contains articles on many of the points above.

Software and code

Policy information about availability of computer code

Data collection	Data were downloaded from public repositories using code written by the authors in R and the Google Colab Python interface with Google Earth Engine.
Data analysis	Software used for analysis included RStudio and R statistical software (version 4.0.x), and Google Colab Notebooks. These codes are available in our group GitHub repository (https://github.com/jaburney/CA-COVIDEJ-2022). We used ArcGIS to generate several of the maps, and Adobe Illustrator to assemble final figures.

For manuscripts utilizing custom algorithms or software that are central to the research but not yet described in published literature, software must be made available to editors and reviewers. We strongly encourage code deposition in a community repository (e.g. GitHub). See the Nature Portfolio guidelines for submitting code & software for further information.

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Policy information about availability of data

All manuscripts must include a data availability statement. This statement should provide the following information, where applicable:

- Accession codes, unique identifiers, or web links for publicly available datasets
- A description of any restrictions on data availability
- For clinical datasets or third party data, please ensure that the statement adheres to our policy

The pollution, weather, and demographic data used in this project are all publicly available. PurpleAir data are accessible via public API (https://api.purpleair.com/), CARB data can be found at (https://www.arb.ca.gov/aqmis2/aqmis2.php). Gridded NO2 data (https://developers.google.com/earth-engine/datasets/catalog/COPERNICUS_S5P_NRTI_L3_NO2) and GridMet weather data (https://developers.google.com/earth-engine/datasets/catalog/IDAHO_EPSCOR_GRIDMET) are available via Google Earth Engine. Mobility data from Safegraph are available to academic researchers (https://www.safegraph.com/academics) but may not be

reposted in raw format. All publicly-available raw data for this project can be found in our project dataverse (https://doi.org/10.7910/DVN/ZXVB7A), and processed and derived data can be found in our GitHub repository (https://github.com/jaburney/CA-COVIDEJ-2022). Finally, we have provided an online tool to facilitate exploration of the data at the Census Block Group scale (https://sabenz.users.earthengine.app/view/covid-ej).

Field-specific reporting

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Ecological, evolutionary & environmental sciences study design

All studies must disclose on these points even when the disclosure is negative.

Study description	This is a retrospective, empirical study that relates ground-based PM2.5 and satellite-based NO2 pollution measures to Census Block Group demographics and uses the COVID-19 shutdown in spring of 2020 to statistically identify disparate pollution reductions across California's largest racial and ethnic minority groups. The panel analysis controls for weather, population density, road density, mobility (defined as the % of the day spent away from home), income, location-specific-time-invariant effects, and temporal effects (day of week, day of year).
Research sample	The sample is present-day California Census Block Groups (CBGs) as defined and measured in the 2018 American Community Survey (ACS). There are 23,212 Census Block Groups in California at this time.
Sampling strategy	We retained all CBGs for which a complete record of observations over time time period existed. For satellite-based NO2 measurements, this was near-full coverage (22,503 CBGs). For ground-based PM2.5 measurements, 733 unique CBGs were represented in the data.
Data collection	PM2.5 Data: Surface station measurements of particulate matter with diameter smaller than 2.5 microns (PM2.5) were downloaded from publicly available databases from PurpleAir and the California Air Resources Board (CARB). We downloaded all outdoor PurpleAir data available (1891 individual stations) for Jan-Apr 2019 and 2020. We retrieved (May 1, 2020) all hourly CARB PM2.5 data in California available for Jan-Apr 2019 and 2020 using CARB's Air Quality and Meteorological Information System (AQMIS), and calculated the daily mean (150 individual stations). NO2 Data: We used the Copernicus Sentinel-5 Precursor TROPOspheric Monitoring Instrument (TROPOMI, version 1.03.02) Offline tropospheric NO2 column number density for mean NO2 concentrations of the developed areas of each census block group. TROPOMI has a resolution of 0.01 arc degrees. Data were collected for Jan-Apr 2019 and 2020 and only for developed areas based on the U.S. Geological Survey (USGS) National Land Cover Database (NLCD) 2016. For this study, all data was prepared using the Google Earth Engine Python API and formatted as weekly means for each census block group. Weekly means were chosen to counteract the high frequency of missing data, particularly in northern California. Climate Data: For temperature, precipitation, and relative humidity we relied on the Gridded Surface Meteorological dataset (GridMet). GridMet provides daily information at 4-km resolution across the continental USA. For this study, data were aggregated in Google Earth Engine in its original daily frequency for each PM2.5 measurement station, and as a weekly mean for the NO2 Data for each census block group. The weekly mean data was only collected for developed areas based on the U.S. Geological Survey (USGS) National Land Cover Database (NLCD) 2016. Mobility Data: We use SafeGraph's Social Distancing Metrics, which were made available for research as part of the company's COVID-19 response, and have been validated elsewhere. SafeGraph collects and cleans GPS pings from about 45 million mobile devices. The data are available daily at census block group resolution and are close to a random sample of the population. Our primary measure of mobility, not social distancing, is the percent of time spent away from home. We calculate this measure based on the median time (in minutes) that a device was observed at its geohash-7 (about 153m x 153m) home location, which SafeGraph determines as the night time residence of the device in the 6-weeks prior. The data cover the entire period of observation from Jan 1, 2019 until the end of April 2020. Demographic Data: We downloaded census block group level demographic information from the U.S. Census Bureau 2018 5-year American Community Survey (ACS) for all CBGs in California using the tidycensus package for the R programming environment (June 29, 2020). Demographic features included ACS sample-based CBG-level estimates of: population count; White race count (alone or in combination with one or more other races), or ``White"; Black or African American race count (alone or in combination with one or more other races), or ``Black"; Asian race count (alone or in combination with one or more other races), or ``Asian"; Hispanic or Latino origin (of any race) count, or ``Hispanic"; and median income. The other census race designations (American Indian or Alaska Native; Native Hawaiian or Other Pacific Islander) represent a substantially lower share of the California population, and were therefore excluded from our analysis due to small sample sizes. The CBG-level ``share" of these groups was calculated by dividing the CBG count by the CBG population. Population density was calculated as the CBG population divided by the area of the CBG. For the aggregate comparison, we compute the share of the non-White population which may be Hispanic as one minus the share of Whites which do not also identify as Hispanic. Because Hispanic is a separate designation from race in the ACS (i.e., those categorized as Hispanic may also be of any race), we evaluated how distinct Hispanic was from race variables of interest. On average, less than 1% of those identified at the CBG level as Hispanic were also identified as Black or Asian; 61% of Hispanic were White. Thus, Hispanic is effectively distinct from Asian and Black categorizations, and we consider Hispanic, Asian, and Black designations to be unique demographic indicators in our model. The baseline reference group in the more detailed comparison contains all other races and ethnicities and therefore consists almost entirely of people who identify as non-Hispanic White.

	Geographic Data: We calculated road density (m/km2) using The Global Roads Inventory Project (GRIP4) vector dataset for North America, downloaded at https://www.globio.info/download-grip-dataset (April 4, 2020). The GRIP4 dataset harmonizes global geospatial datasets on road infrastructure, including road features that can be categorized as highways, primary roads, secondary roads, tertiary roads and local roads. It is consistent with primary and secondary road classifications from the U.S. Census TIGER/Line shapefiles for roads. To calculate road density for each CBG, we summed road lengths within the area of the CBG, and divided by the area of the CBG.
Timing and spatial scale	Analysis covers the period of January 1 - April 30 of both 2019 and 2020 for the state of California. The unit of analysis is the Census Block Group. Gridded satellite observations and weather data are aggregated to the CBG scale for analysis.
Data exclusions	For both CARB and PurpleAir data, days with mean PM2.5 equal to zero or greater than 500 µg/m3 were removed as outliers. Sites for which we removed more than 10% of data were excluded from the entire analysis. Sites with less than 80% data coverage during our study period were also excluded. For our statistical models requiring 2019 and 2020 data, we applied these requirements to both years independently. This quality filtering removed 5.9% of daily CARB PM2.5 data, and 11.4% of daily PurpleAir data, resulting in remaining data from 1664 individual stations (119 CARB and 1545 Purple Air). However, only 830 of those stations (106 CARB and 724 PurpleAir) include data for 2019 and 2020 for the pre-shutdown and shutdown period, and were therefore used in our empirical statistical analysis. This corresponded to 733 unique CBGs with surface PM2.5 measurements. All other data were available for these CBGs.
Reproducibility	Several features of our data and design facilitated robustness checks: The use of two distinct pollutants as outcomes, one measured on the ground and one by satellite, offered one opportunity. The different spatial coverage for the two pollutants, as well as the different spatial coverage of the ground-based monitoring networks also offered another. In addition, we tested many different sensible control and weighting schemes, with very similar results. Complete code is provided for reproducibility.
Randomization	Not applicable. This is a retrospective, quasi-experimental study.
Blinding	Not applicable.

Did the study involve field work? ☐ Yes ☒ No

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Materials & experimental systems

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☒	☐ Animals and other organisms
☒	☐ Human research participants
☒	☐ Clinical data
☒	☐ Dual use research of concern

Methods

n/a	Involved in the study
☒	☐ ChIP-seq
☒	☐ Flow cytometry
☒	☐ MRI-based neuroimaging

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Article

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An environmental justice analysis of air pollution emissions in the United States from 1970 to 2010

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Over the last decades, air pollution emissions have decreased substantially; however, inequities in air pollution persist. We evaluate county-level racial/ethnic and socioeconomic disparities in emissions changes from six air pollution source sectors (industry [SO_2], energy [SO_2, NO_x], agriculture [NH_3], commercial [NO_x], residential [particulate organic carbon], and on-road transportation [NO_x]) in the contiguous United States during the 40 years following the Clean Air Act (CAA) enactment (1970-2010). We calculate relative emission changes and examine the differential changes given county demographics using hierarchical nested models. The results show racial/ethnic disparities, particularly in the industry and energy generation source sectors. We also find that median family income is a driver of variation in relative emissions changes in all sectors—counties with median family income >$75 K vs. less generally experience larger relative declines in industry, energy, transportation, residential, and commercial-related emissions. Emissions from most air pollution source sectors have, on a national level, decreased following the United States CAA. In this work, we show that the relative reductions in emissions varied across racial/ethnic and socioeconomic groups.

The United States (US) has seen reductions in air pollution emissions from various source sectors since the enactment of the Clean Air Act (CAA) in 1970, contributing to improving air quality substantially[1–3]. However, studies show that racial/ethnic and socioeconomic inequities in air pollution exposure persist across the US despite the nationwide downward trend in air pollution[4–7], indicating inequities in air pollution emissions reductions.

Environmental justice studies in air pollution have heavily relied on modeled ambient air pollution concentrations[4–6,8–10]. Unlike measured air pollutant concentrations, modeled concentrations can more comprehensively cover geographical regions, including those where air quality monitors are sparse[11]. However, pollution concentrations alone do not provide information about specific air pollution sources contributing to the observed disparities. A couple of studies have addressed this knowledge gap by modeling source-specific air pollution concentrations[7,12]. The disconnect between the studied air pollution concentrations and air pollution sources presents a barrier to developing efficient and economically feasible regulatory strategies to address air pollution inequities. Equitable emissions decrease, i.e., greater reductions for overburdened

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groups, can then facilitate a more just reduction of air pollution concentrations and exposures.

Most evidence on targetable air pollution sources comes from cross-sectional analyses. Several studies have used residential proximity to pollution sources as a metric to evaluate inequities. These studies have found racial/ethnic and socioeconomic disparities in the spatial distribution of industrial facilities[6,13], landfills, hazardous waste sites[14,15], gas[16] and coal-fired power plants[17], roadways[18], and other pollution sources[19,20]. Residential proximity studies are generally cross-sectional and often focus on a single air pollution source sector. Other studies have evaluated inequity in multiple air pollution sources by leveraging data from local emissions inventories, but these analyses also focused on a single time point[7]. Thus, they do not provide information about temporal inequity trends in emissions changes.

In this work, we evaluated county-level racial/ethnic and socioeconomic disparities in air pollution emissions changes in the contiguous US from 1970 to 2010 in the transportation (nitrogen oxides [NO_x]), agriculture (ammonia [NH_3]), residential (particulate organic carbon), commercial (NO_x), industry (sulfide dioxide [SO_2]), and energy (NO_x and SO_2) sectors. We used county-level data on race/ethnicity and socioeconomic status (SES) from the decennial Census (1970–2010)—race/ethnicity group definitions were based on the Census definition in each decennial. We leveraged air pollution emissions data from the Community Emissions Data Global Burden of Disease Map ($CED_{GBD\text{-}MAP}$) to estimate county-level relative emissions changes for the six air pollution source sectors, using specific pollutant tracers per source sector. $CED_{GBD\text{-}MAP}$ is an air pollution emissions inventory that uses emissions data from local and regional inventories and activity data to calculate gridded emissions estimates for the globe from 1970 to 2017[21]. Using hierarchical models, we evaluated disparities in emissions changes by modeling the association between county-level demographics and the decennial relative change in emissions. We focused on relative emissions changes because, to support equity, emission decreases should be relative to existing emissions levels in each county[20]. That is, places with higher pollution levels should have higher emissions reductions. We found racial/ethnic disparities in emissions changes, particularly in the industry and energy sector. We also found that median family income is a driver of emissions changes in all air pollution source sectors—counties with median family income >$75 K experienced larger declines in industry, energy, transportation, residential, and commercial-related emissions.

Results

Trends in demographics

From 1970 to 2000, the US grew in racial/ethnic diversity. Nationwide county average Hispanic population percentage increased from 3.2 to 6.2%, the Asian population from 0.3 to 3.4%, and the American Indian population from 0.9 to 1.6%, whereas the percentage Black population decreased from 9.1 to 8.8%. During the study time, the average county White population percentage was 87.5%. The average county percent poverty decreased from 20.4 to 13.7%, but unemployment increased from 4.5 to 5.8%. Average county-level median family income (2010 adjusted dollars) increased from $45,400 to $55,100 and the median property value (2010 adjusted dollars) increased from $33,700 to $110,200. Table 1 presents summary statistics for the demographic variables at each decennial included in the study (1970, 1980, 1990, and 2000) and Supplementary Fig. 1 shows the Spearman correlation coefficients among these variables.

Trends in air pollution emissions

We observed variability in emission changes across counties with variation in both the magnitude and direction of change (Fig. 1 and Supplementary Dashboard). On average, air pollution emissions across the US decreased substantially from 1970 to 2010 from all source sectors we considered except for agriculture NH_3 and residential particulate organic carbon (OC). We observed the most pronounced emission decreases for SO_2 from industry and energy, which fell from a mean of 5.6 to 0.6 (−89.3%) and 9.0 to 3.0 (−66.7%) kg/km^2/day, respectively, over the 40 years. Nationwide average emissions of NO_x from transportation and energy decreased more moderately from 5.2 to 2.2 (−57.7%) and 2.5 to 1.5 (−40.0%) kg/km^2/day, respectively. NO_x emissions from commercial sources decreased from 0.3 to 0.2 (−50.0%) kg/km^2/day. Nationwide average emissions of NH_3 from agriculture increased from 0.7 to 1.3 (85.7%) kg/km^2/day, and OC emissions from the residential source sector remained constant at 0.1 kg/km^2/day (Table 2 and Supplementary Fig. 2). The average decennial relative emission changes for each of the evaluated air pollutants are presented in Table 3.

Table 1 | Variables of interest and potential confounders

	1970, *N* = 3105	1980, *N* = 3108	1990, *N* = 3110	2000, *N* = 3109
Variables of interest				
% White	89.7 (86.7, 99.4)	88.4 (83.1, 98.8)	87.4 (81.0, 98.4)	84.8 (77.2, 96.7)
% Black	9.1 (0.1, 11.3)	8.7 (0.1, 10.4)	8.7 (0.2, 10.1)	8.8 (0.3, 10.1)
% Asian	0.3 (0.1, 0.3)	0.4 (0.1, 0.4)	2.4 (0.3, 1.9)	3.4 (0.6, 3.5)
% American Indian	0.9 (0.0, 0.2)	1.2 (0.1, 0.5)	1.5 (0.2, 0.6)	1.6 (0.2, 0.8)
% Hispanic	3.2 (0.0, 1.9)	3.8 (0.5, 1.8)	4.5 (0.4, 2.5)	6.2 (0.9, 5.1)
% Poverty	20.4 (12.1, 26.3)	15.4 (10.3, 19.0)	16.2 (10.9, 19.9)	13.7 (9.2, 16.8)
% Unemployment	4.5 (3.0, 5.5)	6.8 (4.5, 8.5)	6.6 (4.6, 8.1)	5.8 (4.0, 6.9)
Median Family Income (×$1000)	45.4 (38.2, 51.2)	46.9 (40.1, 52.9)	48.2 (40.5, 53.8)	55.1 (46.8, 60.9)
Median Property Value (×$1000)	33.7 (23.2, 40.8)	98.3 (72.9, 113.0)	91.3 (62.5, 101.8)	110.2 (75.7, 126.3)
Covariates				
Population density (population/km^2)	82.5 (5.6, 28.2)	83.7 (6.3, 33.8)	86.0 (6.2, 35.7)	93.3 (6.7, 39.8)
Urbanicity				
Metropolitan	675.0 (21.7%)	788.0 (25.4%)	836.0 (26.9%)	907.0 (29.2%)
Micropolitan	1577.0 (50.8%)	1583.0 (50.9%)	1537.0 (49.4%)	1525.0 (49.1%)
Non-urban	853.0 (27.5%)	737.0 (23.7%)	737.0 (23.7%)	677.0 (21.8%)

County-level annual mean (interquartile range, IQR) for continuous variables and percent observations for the categorical variables. *N* = total number of counties at each decennial. Race/ethnicity percentages do not add up to 100% because race groups include Hispanic and non-Hispanic populations.

https://doi.org/10.1038/s41467-023-43492-9

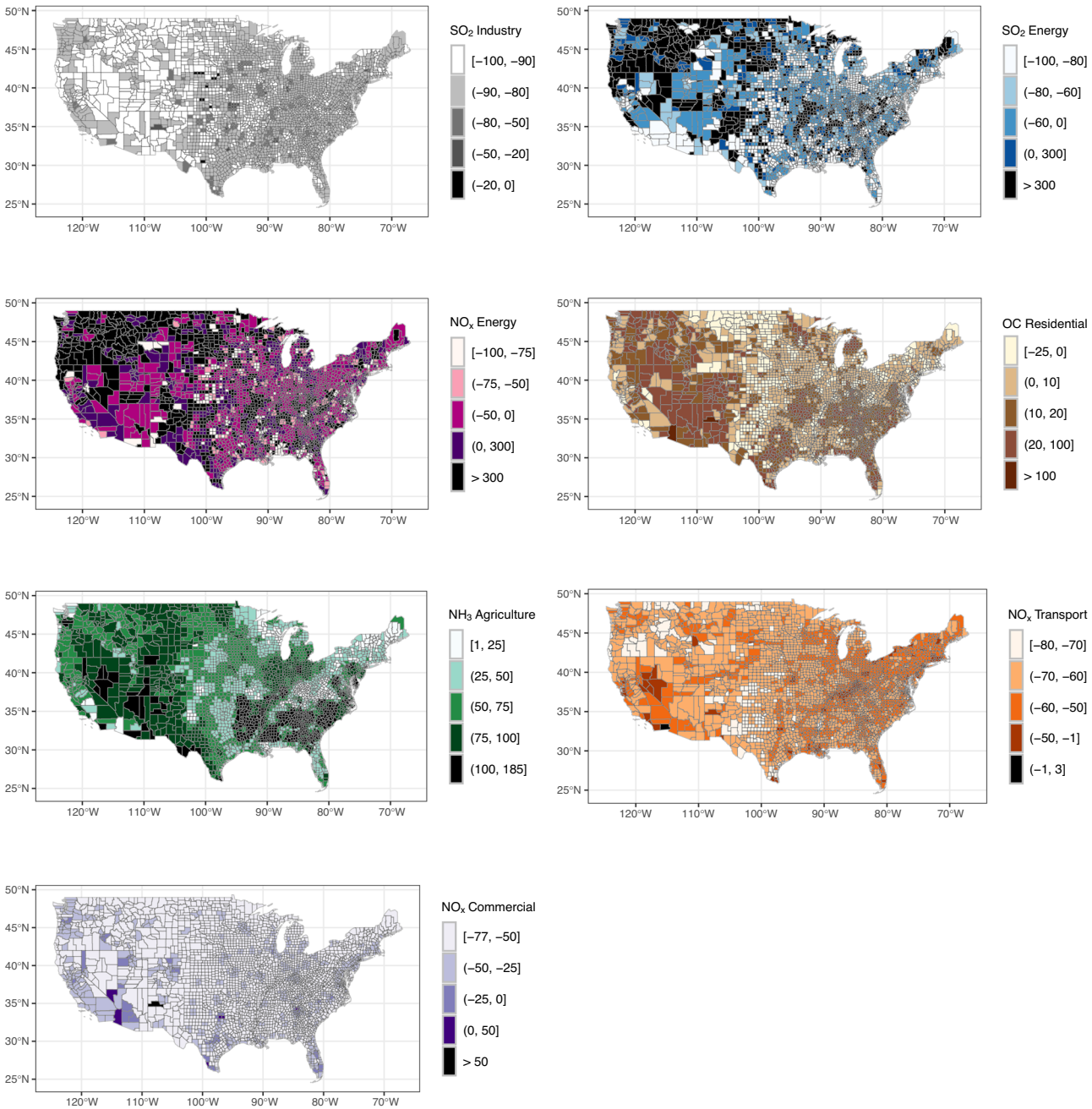


Fig. 1 | Pollutant emissions: County-level relative decennial emissions changes (percentages) from 1970 to 2010 for the seven air pollutants evaluated in the study. Darker tone colors indicate larger relative emissions increases or lower relative emissions decreases. See Supplementary Dashboard for maps of emissions (kg/km^2/day) for each pollutant and during each year. This figure used county spatial shape files obtained from NHGIS.

County-level disparities by racial/ethnic groups and socioeconomic status

In a longitudinal analysis from 1970 to 2010, we evaluate the relationship between relative decennial emissions changes and racial/ethnic groups (White, Black, Asian, American Indian, Hispanic) as well as socioeconomic indicators (median family income, median property value, percent poverty, percent unemployment) at the county level across the United States. Figures 2 (racial/ethnic) and 3 (socioeconomic) show all the association curves and we describe our results below. Numeric effect estimates for the linear associations are in Supplementary Table 1. Note that for both linear and nonlinear associations, a positive association indicates percentage point increases in the relative emissions change—i.e., larger relative emissions increases (e.g., from 5 to 10%) or smaller emissions decreases (e.g., from −10 to −5%)—per increase in the demographic variable of interest. Conversely, a negative association indicates percentage point decreases in the relative emission change—i.e., smaller increases (e.g., from 10 to 5%) or more prominent decreases (e.g., from −5 to −10%)—per increase in the demographic variable of interest.

Industry: SO_2 emissions

The association between each racial/ethnic group and the relative decennial change in industrial SO_2 emissions was nonlinear, except for the Black population percentage. We found a −1.35 percentage point (pp) (95% CI: −2.09, −0.60) decrease in the industrial SO_2 relative emissions change per a 10 pp increase in the proportion of county-

Table 2 | Air pollution emissions

Air pollution source sector (kg/km²/day)	1970, *N* = 3101	1980, *N* = 3103	1990, *N* = 3105	2000, *N* = 3104	2010, *N* = 3103
Industry: SO_2	5.6 (0.0, 3.2)	3.2 (0.0, 1.7)	2.6 (0.0, 1.3)	1.4 (0.0, 0.8)	0.6 (0.0, 0.4)
Energy: SO_2	9.0 (0.0, 5.9)	9.1 (0.0, 5.9)	8.5 (0.0, 5.0)	6.2 (0.0, 3.8)	3.0 (0.0, 1.6)
Energy: NO_x	2.5 (0.0, 2.0)	3.5 (0.0, 2.5)	3.5 (0.0, 2.6)	2.8 (0.0, 2.3)	1.5 (0.0, 1.3)
Agriculture: NH_3	0.7 (0.3, 1.0)	0.9 (0.4, 1.2)	1.0 (0.4, 1.2)	1.1 (0.4, 1.5)	1.3 (0.5, 1.7)
Transportation: NO_x	5.2 (3.4, 5.8)	4.8 (3.0, 5.4)	4.3 (2.7, 4.9)	3.9 (2.2, 4.5)	2.2 (1.2, 2.5)
Residential: OC	0.1 (0.0, 0.1)	0.2 (0.0, 0.1)	0.1 (0.0, 0.1)	0.1 (0.0, 0.1)	0.1 (0.0, 0.1)
Commercial: NO_x	0.3 (0.0, 0.2)	0.2 (0.0, 0.1)	0.4 (0.0, 0.2)	0.3 (0.0, 0.1)	0.2 (0.0, 0.1)

County-level annual mean (interquartile range, IQR) emissions. *N* = total number of counties included at the analyses for each time point.

Table 3 | Air pollution relative emissions change

	Mean relative change	IQR
Transportation: NO_x	−19.2	−32.3, −8.9
Agriculture: NH_3	13.8	8.8, 18.3
Residential: OC	9.8	−31.6, 37.3
Commercial: NO_x	−14.3	−33.6, 29.3
Energy: NO_x	41.2	−44.3, 41.1
Energy: SO_2	68.1	−49.4, 7.0
Industry: SO_2	−38.1	−51.9, −19.3

County-level mean and interquartile range (IRQ) for the relative change (%) in emissions (2000–2010).

level Black population; we also found an overall negative nonlinear association between percent White population and the relative SO_2 emissions change. However, the proportions of American Indian and Hispanic populations were positively associated with the relative change in industrial SO_2 emissions in population percentages above ~35%. We found no clear association between county-level Asian population percentage and the change in industrial SO_2 emissions.

The associations between socioeconomic variables and the change in industrial SO_2 emissions were all nonlinear. Percent unemployment and poverty were positively associated with the relative decennial change in industrial SO_2 emissions, with stronger associations at higher percentages. In the case of median family income, the association was negative, with a stronger association below ~$50 K. We found no clear association between median property value and the relative change in industrial SO_2 emissions.

Energy: SO_2 and NO_x emissions

We found no associations between the race/ethnicity groups and the change in energy SO_2 emissions.

The association between each of the racial/ethnic groups and the change in energy NO_x emissions were all linear except for the Hispanic population percentage. A 10 pp increase in the White or Black population percentage was associated with a −9.25 pp (95% CI: −15.01, −3.48) and −17.43 pp (95% CI: −23.88, −10.98) decrease in energy NO_x relative emissions change, respectively. However, a 10pp increase in the Asian population percentage was associated with an 18.52 pp (95% CI: 7.41, 29.63) increase in energy NO_x relative emissions change, and a 10 pp increase in the American Indian population percentage with an 11.78 pp (95% CI: 4.20, 19.38) increase. The Hispanic population was also positively associated with the change in energy NO_x relative emissions change, with a slightly stronger association at high Hispanic population percentages.

The associations between socioeconomic variables and the change in energy SO_2 emissions were all nonlinear. Percent unemployment was positively associated with the relative decennial change in energy emissions below ~5% and null at higher unemployment percentages. Percent poverty was positively associated with the outcome, and this association became stronger with increasing percent poverty levels. Median family income was negatively associated with the relative change in energy SO_2 emissions but the association plateaued above ~$50 K. The median property value was also negatively associated with the relative change in energy SO_2 emissions but only below ~$100 K; above that, there was no association.

The associations between socioeconomic variables and the change in energy NO_x emissions were also all nonlinear. Percent poverty was positively associated with the relative change in energy NO_x emissions below 20% poverty and negative above this value. Median family income was negatively associated with the relative change in NO_x emissions above ~$50 K but null for lower income values. We found no association between percent unemployment or median property value with the relative emissions change in energy NO_x.

Agriculture: NH_3 emissions

We found no associations between county-level White or Asian percentage population and the relative decennial change in agricultural NH_3 emissions. However, a 10 pp increase in the American Indian percentage population was linearly associated with a 0.33 pp (95% CI: −0.02, 0.67) increase in the relative change of agriculture NH_3 emissions. We also found a positive nonlinear association between the Hispanic population percentage and the relative change in agricultural NH_3 emissions, with steeper slopes in high county-level Hispanic population percentages. The Black population percentage was nonlinearly positively associated with the relative change in agricultural NH_3 emissions in population percentages below 50%. Above that percentage, the association was null.

The associations between socioeconomic variables and the change in agricultural NH_3 emissions were all nonlinear. We found a positive association between percent unemployment and the relative change in agricultural NH_3 emissions in unemployment levels below ~7% but a negative association at higher unemployment percentages. We found a negative association between percent poverty and the relative decennial change in NH_3 emissions. Conversely, median family income was positively associated with the relative change in NH_3 emissions, but the association plateaued and was null above $50 K. We also found a positive association between median property value and the relative decennial change in agriculture NH_3 emissions above ~$750 K.

On-road transportation: NO_x emissions

We found a negative nonlinear association between county-level Asian population percentage and the relative decennial change in transportation NO_x emissions, but after ~25%, the association plateaued. We found no associations between the White, Black, American Indian, or Hispanic percentage population and the relative change in transportation NO_x emissions.

The associations between each socioeconomic variable and the relative change in transportation NO_x emissions were all nonlinear. We found that percent unemployment and population in poverty were

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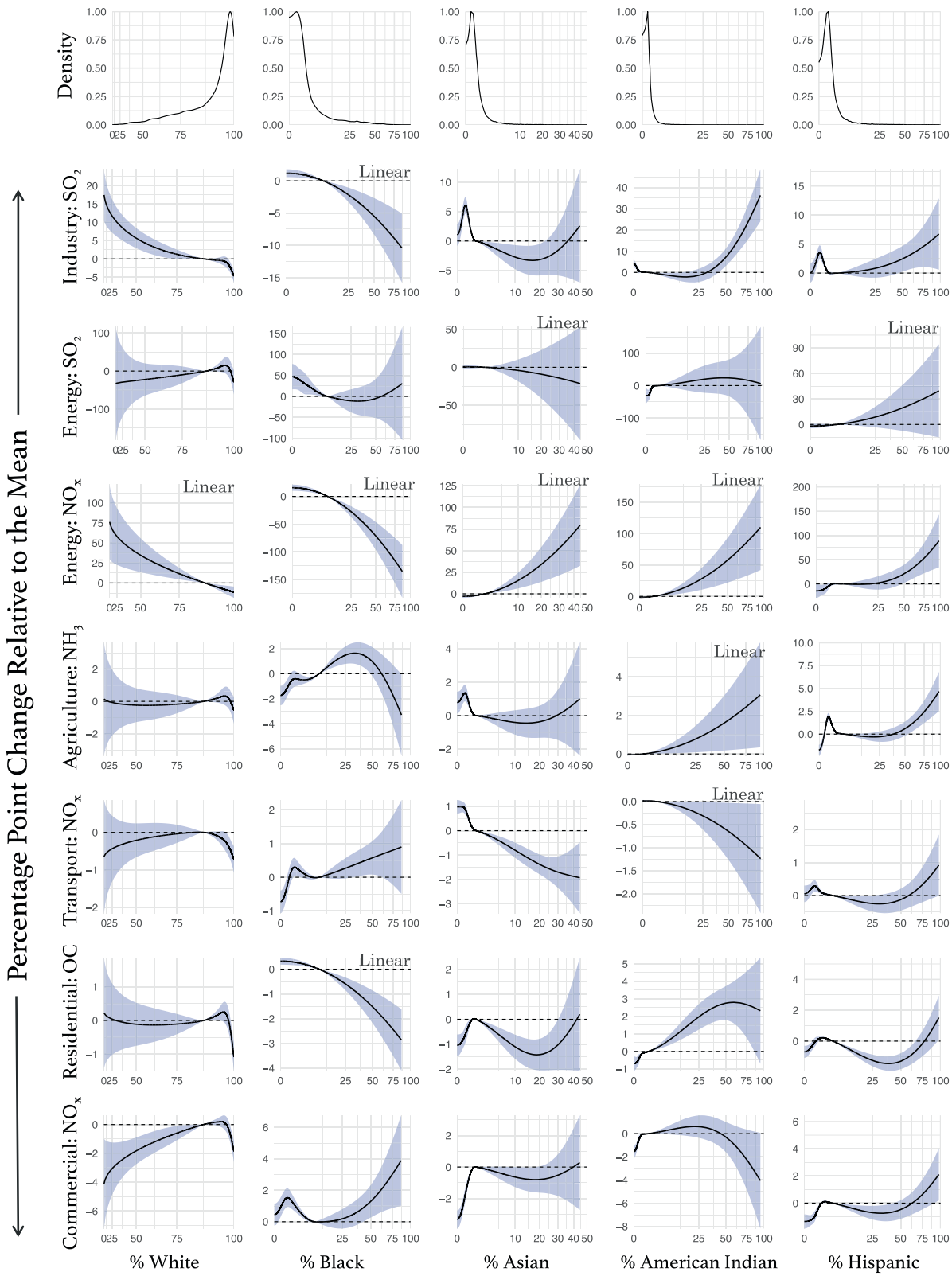


Fig. 2 | Association curves for the racial/ethnic groups. All models are adjusted for population density, urbanicity, EPA geographic region, and year. The x-axis was scaled to improve the visibility of the curve in the low/high x values (squared root for the percent White population and squared for the other demographics). The curves represent the relationship between the demographic variables and change in the relative emissions (percentage point difference) relative to the mean of the demographic variable (e.g., from the national Hispanic population average of 4.5% [during the study period] to 75%, energy NO_x relative emissions increase 50 percentage points). The shaded area on the curve is the 95% confidence interval. Linear associations are indicated by the "Linear" label. Density plots for the independent variables are shown at the top of each column.

negatively associated with the relative change in transportation NO_x emissions. For unemployment, the association was null above ~20% unemployment. The association between median family income and the relative decennial change in transportation NO_x emissions was positive below ~$75 K and negative above this value. Median property value had a positive association with the relative change in transportation NO_x emissions below ~$100 K.

Residential: OC emissions

We found that a 10 pp increase in the county-level Black population percentage was linearly associated with a −0.37 pp (95% CI: −0.54, −0.19) decrease in the relative decennial change in residential OC emissions. White, Asian, American Indian, and Hispanic population percentages were nonlinearly associated with the relative change in residential OC emissions. The percentage of White population was negatively associated with the relative change in residential OC emissions in percentages above ~85% White population. Below that, the association was null. In the Asian and Hispanic population percentages, the association was positive below ~5% and mostly negative above. The American Indian population percentage was positively associated with the relative change in residential OC emissions but the association plateaued above 50%.

The associations between socioeconomic variables and the relative decennial change in residential OC emissions were all nonlinear. Percent unemployment was positively associated with the relative change in residential OC emissions below 5% and null in higher percentages of unemployment. The association is positive below ~10% and negative at higher values for the percent below poverty. Median family income was overall negatively associated with the relative change in residential OC emissions but the association was more robust at values above $75 K. The median property value was positively associated with the relative change in OC emissions below ~$125 K and negative at higher median property values.

Commercial: NO_x emissions

The associations between racial/ethnic groups and the relative decennial change in commercial NO_x emissions were nonlinear. We found a positive association in county-level White population percentages below 80% and a negative association above that. In the case of the Black population percentage, the association was overall positive. For the Asian percentage population, the association was positive below ~5% and null above that percentage. We found no association with the American Indian percentage population. The Hispanic population percentage was positively associated with the relative change in commercial NO_x emissions in population percentages below ~5% and null after that.

The associations between socioeconomic variables and the change in NO_x emissions were all nonlinear. Unemployment was positively associated with the relative decennial change in commercial NO_x emissions below 5% and negative at higher values. Percent poverty and median property value were overall negatively associated with the relative change in commercial NO_x emissions. In the case of percent poverty, the association plateaued after ~20% and for property value, the association was stronger after ~$500 K. The association between median family income and the relative change in commercial NO_x emissions was positive below ~$75 K and negative above that.

We have summarized all results described above in Fig. 4.

Confounding by socioeconomic status

We also evaluated the robustness of our results for the racial/ethnic groups to potential confounding bias by SES. In this sensitivity analysis, we modeled the associations for each racial/ethnic group, adjusting for socioeconomic variables (median family income, property value, percent poverty, and percent unemployment). The results from the sensitivity analysis, for the most part, support the primary analysis results, but we did observe some differences, particularly in the residential and commercial sectors. In the sensitivity analysis, the association between the percent White population and the change in residential OC and commercial NO_x emissions was null. In contrast, these associations were negative in the main analysis. We also did not find an association between the Black and Asian population percentages with the change in emissions from these two air pollution source sectors. Furthermore, we did not find positive associations in the lower population percentages for the Hispanic population as in the main analysis. The results from this sensitivity analysis are presented in Supplementary Fig. 3.

Regional analyses

To evaluate the relevance of national results to sub-national areas, we constructed regional models for industry SO_2 and transportation NO_x by EPA regions. The regional models evaluated the association between median family income, percent Black population, and percent White population with the relative decennial change in emissions in each of these two air pollution source sectors. For the most part, the regional results agreed with the national-level results, but there were some differences, particularly for the racial/ethnic groups. In the national analysis, we found no association between the White and Black population percentages and the relative change in transportation NO_x emissions; however, in regions 1–3 (Northeast area), 5 (portions of upper Midwest and Ohio Valley), and 6 (southern Texas), we found a clear positive association between the Black population percentage and the relative change in transportation NO_x emissions (Supplementary Fig. 4). We also found a positive association between the White population percentage and the relative change in transportation NO_x emissions in Region 1–3 (Northeast area). In the case of SO_2 emissions from industry, for the White population percentage, we found a negative association in Region 8 (Northern Rockies and Plains area), which reflected the results from the main analysis; however, in regions 1–3 (Northeast area) the association was positive and null in the rest of the regions. For the Black population percentage, we found a positive association with the relative change in industry SO_2 emissions in Regions 1–3—opposite to the national analysis results, which showed a negative association—and no association in other EPA regions (Supplementary Fig. 5). It is important to note that splitting the data into regions decreased statistical power, likely influencing our ability to detect associations in some of the regions.

Discussion

Our research provides a national investigation of air pollution emission changes in the 40 years following the CAA enactment. We examined racial/ethnic and socioeconomic disparities in the relative decennial emissions change for six air pollution source sectors: industry, energy, agriculture, on-road transportation, commercial, and residential. In our study, we found that socio-demographic characteristics of counties were associated with the county-level relative changes in air pollution emissions from 1970 to 2010. Our results suggest many, albeit not universally, racial/ethnic and socioeconomic inequalities in reducing air pollution emissions following the CAA.

Emissions from energy generation had some of the largest emissions reductions among the air pollution source sectors we analyzed. However, we found that energy SO_2 relative emissions changes had prominent socioeconomic disparities. We also found racial/ethnic inequities in energy NO_x relative emissions changes. The 1990 CAA amendment introduced the Acid Rain Program (ARP), setting a cap on total SO_2 levels to 50% of 1980 levels by 2010 and a two million ton reduction in NO_x emissions by 2000 (no cap for NO_x)[22]. The ARP introduced the allowance trading system that uses market-based incentives to reduce air pollution. For each ton reduced below the applicable emissions limit, owners of a generating unit received an emissions allowance they could use at another unit, keep for future use, or sell[22]. CAA market-based policy strategies have helped achieve

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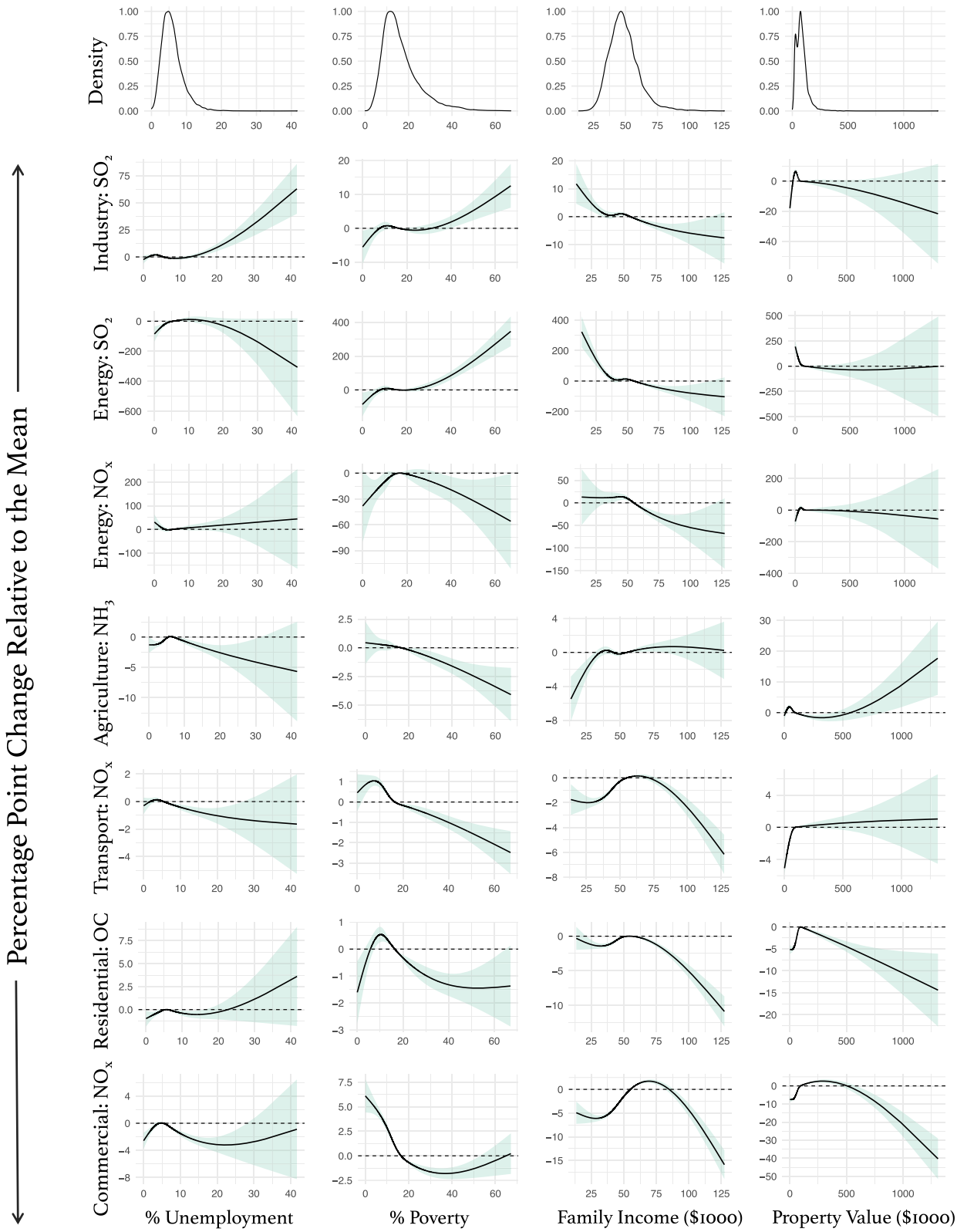


Fig. 3 | Association curves for the socioeconomic variables. All models are adjusted for population density, urbanicity, EPA geographic region, and year. The curves represent the relationship between the demographic variables and change in the relative emissions (percentage point difference) relative to the mean of the demographic variable (e.g., from the national poverty average of 16.5% [during the study period] to 40%, energy SO_2 relative emissions increase 100 percentage points). The shaded area on the curve is the 95% confidence interval. All associations were nonlinear. Density plots for the independent variables are shown at the top of each column.

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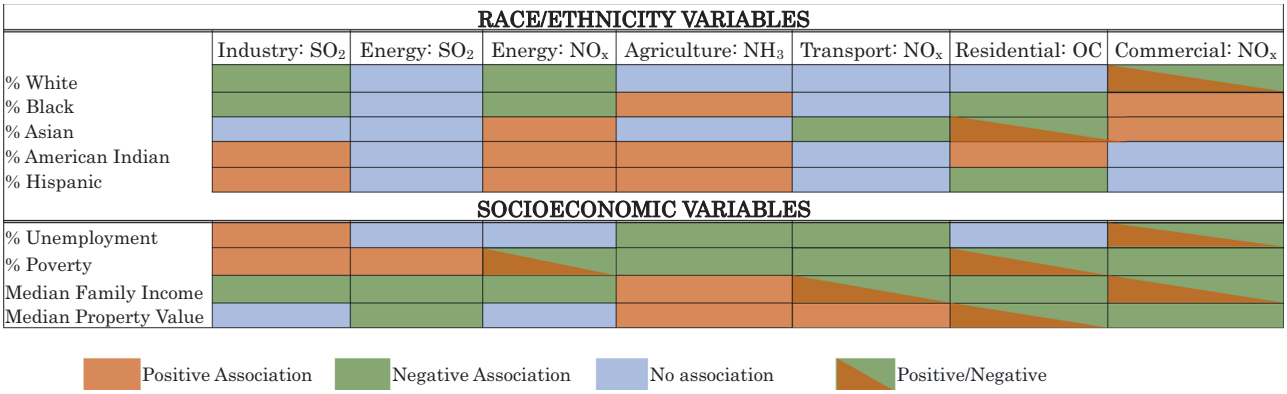


Fig. 4 | Summary of results categorizing the associations into four groups. (1) Positive association (orange): a unit increase in the demographic variable is associated with a percentage point increase in the relative emissions change (e.g., a larger relative emissions increase or a smaller relative reduction); (2) Negative associations (green): a unit increase in the demographic variable is associated with a percentage point decrease in the relative emissions change (e.g., a smaller relative emissions increase or larger relative reduction); (3) No association (blue) indicates no association between the demographic variable and the decennial relative emission change; and (4) Positive/Negative association (bi-color orange and green): a positive association in the lower values of the demographic variable and a negative in the higher values. This is an oversimplification of results. For detailed results, see Figs. 2 and 3.

emission reductions in energy generation at the lowest financial cost[23]. Despite its unarguable success in reducing net air pollutant emissions[24,25], there are equity concerns over using market-based strategies[26]. Previous studies have found that energy facilities are disproportionally located in low-income and communities of color[27–29]. Our study shows that from 1970 to 2010, an increase in the percentage of American Indian, Asian, or Hispanic population resulted in an increase in the energy NO_x relative emissions change, whereas the opposite occurred with White and Black population percentages. For instance, an increase in the Hispanic population percentage from the national average of 4.4% to 75% resulted in a 50 pp increase in the relative change of energy NO_x emissions; and a decrease in county White percentage from the national average of 87% to 25% led to 12.5 pp increase in the relative emissions change. Our results also show that an increase in median family income resulted in a decrease in both energy NO_x and SO_2 relative emissions (e.g., an increase in median family income from the national average of $49 K to $100 K resulted in nearly 100 pp decrease in the energy SO_2 relative emissions change). In addition to other factors, such as historical racism in land distribution[30–32], our results suggest inequities in emissions reductions could contribute to persistent air pollution inequities. Thus, it is important to evaluate the effects of air quality policy on mitigating or aggravating racial/ethnic and socioeconomic disparities in air pollution exposure in addition to setting net emissions reduction targets[33].

Unlike most other pollutants we analyzed, agricultural NH_3 emissions increased on average from 1970 to 2010, and our findings suggest racial/ethnic disparities in the emissions changes. We found that an increase in county-level percent Hispanic and American Indian populations led to an increase in the relative change of NH_3 emissions. For instance, an increase in county Hispanic population percentage from the national average of 4.4% to 75% resulted in a 2.5 pp increase in the NH_3 relative emissions change. These findings remained consistent after accounting for county-level SES. However, we found the opposite association between percent poverty and unemployment with the relative change in agricultural NH_3 emissions, potentially indicating the importance of agriculture as a job source. Although the pp change in relative emissions as a result of an increase in county percent Hispanic or American Indian population was small compared to the effect we observed in the energy source sector, as emissions from other air pollutants are reduced, NH_3 becomes a critical contributor to the formation of harmful fine particulate matter ($PM_{2.5}$)[34,35]. Agriculture is the leading sector in the Eastern US in driving anthropogenic $PM_{2.5}$ pollution[34,36]. Although the CAA permits federal authorities to regulate NH_3, no federal regulations or incentive programs require reductions in NH_3 emissions[37,38].

County average emissions of OC from the residential sector were low relative to other pollutants we analyzed. On average, the OC emissions changes were minor but with a slight upward trend, and our results suggest potential differences by socioeconomic status and race/ethnicity. For instance, an increase in county-level median family income from the national average of $50 K to $100 K led to a 5 pp decrease in the relative change of OC emissions, whereas an increase in the percent American Indian population from the national average of 1.3% to 50% resulted in 3 pp increase in the relative change of OC emissions. In North America, OC emissions from the residential sector are mainly from solid biofuel use for space heating[21]; however, only a tiny fraction of American households rely on solid biofuel—primarily wood[39]. Solid biofuel for space heating is more prevalent in counties that are predominantly American Indian[40], which aligns with our findings. Also, in 2014, the Energy Information Administration reported that from 2005 to 2012, Northeastern states saw at least a 50% increase in households that rely on wood as the primary heating fuel as heating oil prices rose[41]. Biofuels are often considered a renewable energy source and may be considered a better climate alternative to fossil fuels; however, biofuel combustion emits health-damaging air pollutants, including $PM_{2.5}$, affecting indoor air quality[42,43]—mainly when used in old heating appliances with limited emissions controls[42]. The CAA sets performance standards for residential wood heaters under the New Source Performance Standards. These standards help ensure new customers have access to cleaner burning models but do not apply to existing wood heaters in people's homes[44]. As we transition to clean renewable energy sources, it is crucial to incorporate energy equity programs and regulations that increase clean energy accessibility and minimize the number of households turning to less clean or safe heating options to limit financial stress[45]. Although the percentage of households using solid biofuels is low, our findings suggest it might encompass vulnerable communities.

Most of the associations between the demographic variables we analyzed and pollutant relative emissions changes were nonlinear, reflecting the complexity of these relationships. The nonlinear relationships between county-level socioeconomic characteristics and the relative NO_x emissions changes from transportation particularly stood out. For instance, below a county-level median family income of $70 K, an increase in income was associated with an increase in the relative emissions change. However, for median family income above $70 K, an increase in income was associated with a decrease in the relative

emissions change. Other studies have found similarly shaped relationships between income measurements and air pollution emissions in the US and abroad[46,47]. These findings suggest that from 1970 to 2010, relative NO_x emissions decreases have been more substantial in high-income counties. The overall reduction in NO_x emissions from transportation has resulted from the many emissions regulations, standards, and routine vehicle inspection and maintenance programs established through the CAA. These regulations have pushed the development and implementation of newer technologies to make vehicles more fuel-efficient and their emissions cleaner[48]. However, despite the success at the national level, several studies have shown that the current distribution of traffic-related pollution disproportionally impacts vulnerable communities[49–51]. Addressing inequities in traffic-related air pollution exposure, thus, may require targeted strategies. Mitigating traffic-related pollution in the most affected areas will be vital to mitigating current disparities and preventing their worsening from unequal adoption of electric vehicles[52].

Importantly, not all air pollutant emissions reductions disproportionally affected all vulnerable populations. In our analysis, socioeconomic disparities were more prevalent than racial/ethnic but the results varied by air pollutant, source, and demographic variable. In some air pollution source sectors, the reductions benefited some vulnerable populations. For example, an increase in county-level percent Black population was associated with a decrease in the relative emissions change in the industrial, energy, and residential air pollution source sectors. We also found a similar beneficial association for the Asian population in the transportation sector. In contrast, percent American Indian and Hispanic populations were primarily associated with an increase in the relative emissions change. And across all air pollution source sectors, except agriculture, an increase in median family income was linked with a decrease in relative emissions change.

Like all studies, this analysis comes with caveats. First and foremost, studies suggest that micro-scale (e.g., neighborhood-level) inequities in air pollution are common[49]. However, the air pollution emission estimates were only available in $0.5^o \times 0.5^o$ grid resolution (~55×55 km), precluding a subcounty-level analysis. As a result, our analysis provides limited insight into the factors that drive emissions injustice at the local level. Importantly, emissions are different from air pollution concentrations in geospatial variation. The density of pollution sources spatially might not have as much variation in a hyperlocal spatial resolution (e.g., census tracts or blocks) compared to county-level. This also means that spatial variations in air pollution emissions do not perfectly capture population air pollution exposure variations. In this study, we provide information about potential country-wide inequalities in the distribution of air pollution sources by leveraging emission data that can inform federal, state, and county-level regulations and supplement local-level analysis. The air pollution emissions are estimates and come with uncertainties, which vary across source sectors, time, and geography. In addition, we present aggregated results for the contiguous United States, and associations may have important sub-national variability that we may not have been able to capture. We ran regional models, but statistical power was limited for those analyses, particularly for racial/ethnic groups with low population counts, such as American Indian and Asian populations, which we could not analyze in the regional models. Also, the census racial/ethnic definitions changed throughout the study period. As a result, population growth or stagnation of a group may partially result from a broadening or narrowing of the census racial/ethnic definitions. This may be partly why, in our analyses, associations between racial/ethnic variables and air pollutant emissions changes were not as common. Furthermore, Hispanic breakdowns for the racial groups were unavailable for 1970; thus, the racial groups included both Hispanic and non-Hispanic populations. In this study, we evaluated one pollutant associated with each source sector (two in the case of energy), but a single source sector emits multiple pollutants and each may have different trends. Also, it is important to note that people are exposed to ambient air pollution concentrations, and various factors influence individual-level exposures (e.g., meteorology, human activity, housing quality etc.) which we did not consider in this study. Our analyses also encompassed a large number of models, and issues related to multiple comparisons are of relevance. Lastly, although we evaluated six major air pollution source sectors, they do not account for all pollution sources in the US. Despite these limitations, we provide a look at longitudinal trends in air pollution emissions from six major sources following the 1970 CAA. The large number of results and identified non-linearities meant that we were unable to discuss each finding in detail.

Methods

We conducted a longitudinal analysis to investigate the association between county-level demographics and subsequent changes in air pollution emissions across the contiguous US from 1970 to 2010. In 1970, the continental US had 3106 counties, which increased to 3109 by 2010. From the analysis, we excluded Yellowstone National Park County (average population = 130 individuals), which had a negative property value in the 1970 census data. We removed three counties (Broomfield, CO; Washabaugh, SD; and Nansemond, VA) that existed for only one year during the study period; thus, we could not estimate a change in emissions. We also removed five small islands and coastal counties for which we could not estimate emissions (Nantucket, MA; Mathews, VA; San Juan, WA; Door, WI; Poquoson, VA). In 1970, the Census did not collect race/ethnicity and ethnicity data for DC or property value for Adam's County, WI; thus, these two counties only contributed to the analysis from 1980 to 2010.

Predictor variables

We used county-level data from the American Decennial Census for 1970, 1980, 1990, and 2000 to characterize race/ethnicity and socioeconomic conditions (NHGIS database[53]) in the contiguous US (excluding AK, HI, and Puerto Rico). We estimated counties' percent population for five race/ethnicity categories (as defined by the Census Bureau): White, Black, American Indian, Asian, and Hispanic. The racial/ethnic categories included Hispanic and non-Hispanic populations because ethnicity breakdowns for racial groups were unavailable for 1970. Therefore, the racial/ethnic percentages by county could sum to more than 100%. We characterized county-level SES using median family income (in dollars), median property value (in dollars), percent population living under the poverty threshold as defined by the Census Bureau, and unemployment (the proportion of over 15-year-olds unemployed out of the civilian workforce). The Census did not collect median family income and property value in 1970. Thus, for 1970, we estimated the mean county income by dividing the aggregated family income by the total number of families and the mean property value by dividing the aggregated property value by the total household number (the aggregated variables were available in the 1970 decennial census). We used the estimated 1970 mean family income and property value as proxies for the 1970 medians. We converted monetary variables to 2010 dollars to adjust for inflation using the Consumer Price Index Research Series (cpi-u-rs)[54], (e.g., to adjust 2000 dollars to 2010: 2000 dollars × (2010 cpi-u-rs/2000 cpi-u-rs).

Outcomes of Interest

We examined six emission source sectors: industry, energy, agriculture, commercial, residential, and on-road transportation. Each source sector emits multiple air pollutants; we focused on chemical pollutants associated with each sector that have been previously linked to wide-scale air pollution: sulfur dioxide (SO_2) for industry; ammonia (NH_3) for agriculture; nitrogen oxides (NO_x) for commercial and transportation sectors; organic carbon (OC) for the residential

sector; and NO_x and SO_2 for the energy sector. Table 4 lists specific air pollution sources and fuels associated with each sector.

We obtained the emissions data from the Community Emissions Data Global Burden of Disease Map ($CED_{GBD\text{-}MAP}$) emissions inventory[21]. This is a gridded (0.5° × 0.5° or ~55 × 55 km) global bottom-up emission inventory from 1970 to 2017. In summary, $CED_{GBD\text{-}MAP}$ uses data from various emissions inventories (GAINS, SPEW, US NEI, EDGAR, etc.) and activity data (energy consumption, population, etc.) to calculate global emissions estimates for each chemical compound. For years without available emissions, default estimates are calculated from a linear interpolation and available activity data. Then, local and regional inventories are used to scale sectoral emissions to the national level[21]. We focused on the decennial years 1970, 1980, 1990, 2000, and 2010. We processed the emissions data for each pollutant to estimate county-level emission in kg/km^2/day. We first created a dataset containing the geographical boundaries of US counties for each decade from 1970 to 2010[53] and applied an area-weighted interpolation technique[55] to obtain area-weighted county emission fluxes for each decennial year, pollutant, and pollution source sector of interest. Counties falling within emissions grid cells but whose centroids were outside the contiguous US (0.16% of counties in the dataset) were not included to avoid data issues on the emissions dataset's geographical boundaries (e.g., emissions grid cells partially over sea and land).

For each county, we calculated the relative change in emission fluxes from one decennial to the following expressed as a percentage (e.g., relative change = [(emissions in 1980 − emissions in 1970) / emissions in 1970] × 100). A negative relative change reflects a decrease in emissions over the ten years, whereas a positive relative change represents an increase. For analysis, we temporally matched the decennial demographic/socioeconomic data with the relative change in emissions in the following ten years, i.e., we matched 1990 demographic data to the relative decennial emissions change between 1990 and 2000. Estimating relative changes in energy and industrial emissions resulted in observations with high (i.e., emissions changed from a value close to zero to a large value) and infinite values (i.e., emissions changed from nonzero to zero), respectively. These extreme values affect the proper modeling of associations. Thus, we removed five counties with infinite values in the industry sector (N = 15/12,437) and excluded observations in the top 5 percentile in the energy sector (N = 621/12,437).

Covariate information

We included in the analysis population density (number of people per km^2), categorical variables for the Environment Protection Agency (EPA) geographic regions (Supplementary Fig. 6), and urbanicity (Supplementary Fig. 7) to adjust for potential confounding bias. The ten EPA regional offices are responsible for executing programs within the assigned states and territories, and these programs might differ across regions[56]. We combined regions 1–3, which cover the northeast from VA to ME, into a single group for a total of 8 regions. We used the 2013 National Center for Health Statistics Urban-Rural Classification Scheme for Counties[57] to categorize counties into three urbanicity groups: metropolitan (population ≥ 50,000), micropolitan (50,000 > population ≥ 10,000), and non-urban (population <10,000). We allowed the urbanicity status of counties to change throughout the study period depending on their population size.

Main analysis

We evaluated the association between each predictor of interest (county-level percent population White, Black, American Indian, Asian, and Hispanic, percent poverty and unemployment, median family income and property value) and decennial relative change in emissions from agriculture NH_3, commercial and transportation NO_x, residential OC, energy NO_x and SO_2, and industry SO_2. We built separate models for each predictor variable (race/ethnicity and socioeconomic variables) and air pollution source sector for a total of 48 models. All models were adjusted for population density, urbanicity, EPA region, and time using year as a categorical variable (1970, 1980, 1990, and 2000). The models with the predictor variables percent Black, Asian, and American Indian population were also adjusted for percent White population because the percent White population in a county may co-vary both with the Black, American Indian, or Asian population percentages and the emission changes (see Supplementary Table 2 for a summary of the models). We extracted the association estimates for the White population percentage from the models that included the variables percent Black and percent White. Other studies have used a similar approach[58,59]. We used the following hierarchical model formulation:

$$Y_{tc} = (\beta_0 + b_{0,c|s}) + \beta_x X_{tc} + \beta_z Z_{tc} + \varepsilon_{tc} \quad (1)$$

In the model (1), c represents a county in state s. Y_{tc} is the relative change in emissions for a specific air pollution source sector (e.g., the relative change in NH_3 emissions from the agriculture) in county c from year t to $t+10$. We included random intercepts for counties nested within states ($b_{0,c|s}$), to account for within-county correlation in emissions changes over time. X is the predictor of interest (demographic and socioeconomic factors) and the covariates are summarized in vector $\mathbf{Z}$. In essence, with this model, we estimated the association between county-level demographics and the decennial relative emissions change. That is, per one unit increase in the demographic variable, what is the percentage point change in the decennial relative emissions? Please note that we used racial/ethnic and socioeconomic characteristics of counties in year t to estimate the relative emissions change from year t to $t+10$. Because we did not have emissions data for the year 2020, the last year of demographic data we used is 2000 to

Table 4 | Air pollutant fuel and related activities

Emission Source Sector	Air pollutant	Primary contributing fuel(s)	Example activities
Industry	SO_2	Coal and oil	Industrial boilers in the production of iron-steel, cement, metals, etc.
Energy generation	SO_2	Coal	Electricity production, fuel production and transportation, oil and gas fugitive/flaring, etc.
Energy generation	NO_x	Coal, oil, and gas	
Agriculture	NH_3	N/A	Manure management, soil emissions, enteric fermentation, etc.
Transportation	NO_x	Oil and gas	On-road transportation
Residential energy combustion	OC	Solid biofuel	Cooking, space heating, residential waste burning
Commercial combustion	NO_x	Oil and gas	Combustion in service-providing facilities (e.g., religious facilities, local, state, and federal government, institutional living quarters, sewage treatment facilities, restaurants, and more)

Primary fuel type contribution to emissions of each air pollutant per source sector and sample activities. For more see McDuffie et al.[21].

evaluate the relative decennial emissions change that occurred from 2000 to 2010. Thus, the data included four time points (1970, 1980, 1990, and 2000) and 12,437 observations total (~3000 counties per time point).

We evaluated nonlinearities in the predictors of interest and the continuous covariate (population density) to avoid potential model misspecification and comprehensively characterize the associations with the outcome variable[60]. We used penalized splines to flexibly model the associations and the generalized cross-validation (GCV) criterion to determine whether an association deviated from linearity (estimated degrees of freedom [edf] > 1). If relationships were nonlinear, we included the independent variable of interest (racial/ethnic and socioeconomic variables) with a natural spline (4 degrees of freedom, using the predictor's distribution mean as the reference) in the model. In the final models, we used natural splines rather than penalized splines for the independent variables of interest, as penalized splines can be too flexible and sensitive to influential observations. If we found no evidence of nonlinearity (edf = 1), we included the independent variable as a continuous measure and modeled its linear association with the dependent variable.

Sensitivity analyses

It is often the case that racial/ethnic variables are correlated with socioeconomic variables. Thus, we also evaluated the robustness of our results for the racial/ethnic variables of interest to confounding by SES. We modeled the association between race/ethnicity and the outcome adjusting for socioeconomic variables (family income, poverty, unemployment, property value) in addition to population density, urbanicity, EPA region, and the categorical variable year (see models summary Supplementary Table 3). This analysis followed the structure of Model 1 but with the additional socioeconomic variables included as covariates. We modeled all nonlinear associations with penalized splines.

Secondary analyses

The associations between demographic and socioeconomic factors and the relative decennial change in emissions may vary across regions. However, regional sub-analyses for all emissions source sectors and sociodemographic variables would substantially increase the number of models and the chance of detecting false positive associations. We, therefore, a priori decided on a subset of regional sub-analyses. Specifically, we modeled the associations between median family income and percent population Black and White with industry SO_2 and transportation NO_x, separately in each EPA region. We excluded the rest of the variables to make the regional analysis computationally feasible and also because the percentage for the other racial/ethnic groups (American Indian, Asian, and Hispanic) were very low in some regions of the US; thus, we lack the power to model their associations regionally accurately. We performed the regional analysis using Model 1 and penalized splines for all models. The regional analyses included 32 separate models (Supplementary Table 4).

We report association curves with 95% confidence intervals (CI) for all relationships and effect estimates with 95% CI only for the linear associations. Linear effect estimates are expressed as the percentage point (pp) increase/decrease in the relative emission change per 10 pp increase in the demographic variable of interest.

Reporting summary

Further information on research design is available in the Nature Portfolio Reporting Summary linked to this article.

Data availability

The raw emissions data used in this study can be accessed at https://zenodo.org/record/3754964#.Y-bEE-zMLOS and the raw demographic data via https://data.census.gov/ or NHGIS.org. The processed emissions and demographic data have been deposited in a publicly available GitHub repository [https://github.com/yanellinunez/USA_emissions_code].

Code availability

All analyses were performed using R version 4.1.2 running under macOS Monterey 12.3. Primarily, the package tidyverse version 2.0.0 was used for the cleaning and wrangling of demographic data; package RNetCDF version 2.8-1 and PCICt version 0.5-4.4 for the procession of emissions data; function gamm4 from the package gamm4 version 0.2-6 was used for all modeling analyses; and ggplot2 version 3.4.2 was used for data visualizations. For a complete list of the packages and code used in the analysis, see https://github.com/yanellinunez/USA_emissions_code[61].

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Author contributions

The authors Y.N., M.-A.K., J.A.C., J.G., and L.R.F.H. conceptualized the research questions. Y.N., J.G., and M.-A.K. identified the most appropriate statistical methods to address the research question at hand. Y.N., J.B., J.S., and M.D. conducted the analysis, and Y.N. created all visualizations. M.-A.K. supervised all components of the analysis. Y.N. wrote the first draft of the manuscript, and M.-A.K., J.A.C., J.G., L.R.F.H., E.M.K., J.B., J.S., M.D., and E.M. reviewed the draft and provided feedback.

Competing interests

The authors declare no competing interests.

Additional information

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Driving Environmental Inequality: The Unequal Harms and Benefits of Highways

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Driving Environmental Inequality: The Unequal Harms and Benefits of Highways

Highway construction projects have created extensive environmental and social burdens on racially segregated neighborhoods in urban areas in the U.S. However, few studies examine how some places benefit from highways and contribute to the harms in highway-adjacent communities. This paper aims to fill this gap by (1) conducting a case study of three highway projects in Omaha, Nebraska, and (2) using location-based services data to compare the neighborhood racial demographics of highway drivers to the racial demographics of highway-adjacent neighborhoods. In doing so, our paper heeds the call for more research on relative distribution environmental inequality and environmentalized urban sociology. Our historical case study elucidates how highway planning differed across three highway projects in racially segregated Black, Hispanic, and White neighborhoods. Further, the descriptive statistics show that modern-day drivers on highways in Black and Hispanic neighborhoods are from disproportionately more White neighborhoods compared to the neighborhoods bordering the highways. However, the reverse is not true: drivers using the highway in a majority White neighborhood are from neighborhoods that largely match the demographics of bordering neighborhoods. We discuss the implications of these results for future studies of transportation-related environmental and social inequality and current policy initiatives to remedy these harms.

Keywords: highways; interstates; environmental inequality; environmental justice; racial segregation; transportation justice;

Introduction

Highway construction in U.S. cities boomed during the latter half of the 20th century. Aided by the Federal Highway Act of 1956, the federal government constructed 41,000 miles of highway between the late 1950s and the 1970s (Gamboa et al. 2021). While this policy enabled a burgeoning car culture and economy, it reinforced urban racial and environmental inequality (Archer 2021; Avila 2014; Kimble 2024; Rothstein 2018). According to estimates from the Department of Transportation, more

than 450,000 households and one million people across the country—many of them poor and people of color—were forcibly removed from their homes to make way for interstates and other highway projects (Gamboa et al. 2021). Many scholars note that destroying low-income and Black neighborhoods was not just an unintended consequence of highway construction, but often a key goal (Mohl 2002). Highway construction tore at the social fabric of close-knit communities of color and compounded other explicitly racist practices such as redlining (Bullard 2003; Rothstein 2018). Highways through communities of color also locked those places into geographic positions of socioeconomic disadvantage (Sharkey 2013). In the present day, neighborhoods near highways face significant environmental health hazards such as air and noise pollution (Boothe and Shendell 2008). While scholars have documented highway-related pollution as a source of distributive environmental inequality where communities of color disproportionately experience those harms (Greiner and McKane 2022; Liévanos 2019), there is a gap in considering highways as a source of relative distribution environmental inequality—where highway pollution burdens one social group and benefits another.

Our paper aims to fill this gap by analyzing environmental inequality related to three highway construction projects in Omaha, Nebraska. We present a mixed method approach that includes a case study and descriptive statistics from a unique source of transportation data from a location-based services data provider called Streetlight. We selected three prominent highway projects in the city: (1) the North Freeway, which bisects historically Black North Omaha, (2) the Kennedy Freeway, which borders predominantly Hispanic South Omaha, and (3) the West Dodge Expressway, built for commuters from Omaha's majority-White suburbs. Our case study highlights inequities in the planning process for each of these projects. The descriptive statistics in Streetlight

reveal how these historical processes led to a modern-day inequality by highlighting how the demographics of drivers' home neighborhoods compare to the demographics of the neighborhoods burdened by the historical, social, and environmental impacts of highway traffic.

Literature Review

Our research builds on two different emerging literatures: (1) examining relative distribution environmental inequality in cities (Downey 2005), and (2) "environmentalizing" urban sociology (Angelo and Greenberg 2023). Our analysis highlights relational environmental inequality related to highways—investigating how some social groups benefit from highway projects, while others are harmed by the highways' pollution. Downey's (2005) comprehensive categorization of types of environmental inequality notes that relative distribution environmental inequality examines not just how one group is disproportionately affected by harms—but also about the composition of who benefits from the production of environmental harm. Seamster and Purifoy (2021) build on this concept in their notion of relational uneven development through racial capitalism—the idea that the development of some urban places are explicitly linked to the underdevelopment of other places due to race and class-based hierarchies. Our study also relates to recent efforts to "environmentalize" urban sociology because it considers highway development as both a social and environmental burden (Angelo and Greenberg 2023). While urban sociologists historically separated conceptions of nature from society, our study considers urban development and the daily flows of people between places as environmental dynamics that can have implications for racial health disparities and inequality.

Relative Distribution Environmental Inequality

Environmental inequality research in sociology largely focuses on the uneven distribution of environmental goods and bads. These studies often aim to establish that a

disadvantaged social group—based on race and/or class—lives disproportionately closer to a set of environmental hazards (Brulle and Pellow 2006). While these studies are instructive for documenting inequities among disadvantaged groups, they often do not consider "the flip side of the coin"—how certain groups benefit from environmental harms. Downey (2005) challenges scholars to consider the presence of relative distribution environmental inequality—which can exist when studies fail to show that advantaged groups don't bear a proportionally larger amount of environmental burden consistent with their larger contribution to creation of those environmental harms. In a review of quantitative environmental inequality studies, relative distribution environmental inequality is commonly supported—as the proportion of burden in relation to benefit is rarely met (Downey 2005).

Seamster and Purifoy (2021) similarly discuss relational development via racial capitalism—which is when certain places are underdeveloped in order to benefit other places. In other words, places that are wealthy and predominantly White extract and hoard resources from disadvantaged communities of color. In their case study of an area on the outskirts of Houston, Texas, a majority-white community thrives and develops rapidly at the expense of a predominantly Black unincorporated community. The white community dumps the waste from the development of luxury shopping and residential centers in the Black community, but also seeks to encroach upon the community with additional development. One community's struggle for basic infrastructure is tied directly to another community's prosperity (Seamster and Purifoy 2021). These findings connect to the idea that environmental privilege is linked to environmental burden (Park and Pellow 2011). Pulido's (2000) seminal work in California shows that environmentally unequal outcomes for communities of color is connected to white privilege, with highways playing a prominent role.

Highways are an ideal subset of hazards to examine as a form of relative distribution environmental inequality and relational uneven development—as they are built specifically to create economic growth through faster and more efficient car transportation between places. Fundamentally, highway construction transforms places and reveals the preferences of growth-minded economic elite (Logan and Molotch 1987), dominated by white social networks (Seamster 2015), and focused on maximization of "exchange values" associated with property ownership and development rather than "use values" of place. As the concepts of relational uneven development and relative distribution environmental inequality reveal, the people and places benefiting from highway development have a "flip side" of communities that are disadvantaged by development. So, while highway construction enabled "white flight" from center cities via the creation of the suburbs (Baum-Snow 2007; Clement et al. 2023), it also had lasting social and environmental effects on neighborhoods of color (Bullard, Johnson, and Torres 2004; McGee, Ergas, and Clement 2018). Our aim in this paper is to provide a case study and some empirical evidence of one related benefit-burden relationship—which places benefit from uses the highway infrastructure in relation to the places most exposed to pollution from it.

The Burdens of Highway Construction

The quintessential cultural ideas around cars, driving, and highways are freedom, mobility, and prosperity. But the story of highway construction in U.S. cities is also one of displacement and division. Following the passage of the Federal Highway Act of 1956, cities across the U.S. began to plan highway routes. Federal planners emphasized that highways should go through—rather than around—dense cities, which led to debate about where to put them (DiMento and Ellis 2012). This planning strategy necessitated the destruction of existing urban neighborhoods. Highway construction

occurred at a time when there was also an emphasis on urban "slum removal"—which led to communities of color being targeted for destruction to make way for the highways. In his classic sociological work, Gans (1962) illustrates how an ethnic enclave was perceived by outsiders as a slum—but was a healthy and well-kept neighborhood and community. This might explain why some neighborhoods designated as "slums" organized in opposition to highway construction through their communities with varying levels of success (DiMento and Ellis 2012; Fellman and Brandt 1970). In some cities, such as Miami and Nashville, highway projects divided communities of color while in others, such as Birmingham, Alabama, highways inscribed a "color line" between communities of color and White communities (Archer 2020; Rothstein 2018). The destruction of homes for highways led to decreased social capital in affected communities (Archer 2020).

The benefits of highway construction—such as access to economic opportunity and increased public investment—have also not been realized by neighborhoods of color, which have higher rates of transportation insecurity despite their disproportionate exposure to transportation-related pollution (Murphy et al. 2022). Scholars have also interrogated the spatial mismatch hypothesis—which contends that well-paid jobs and other social goods are located further from the communities of color that could benefit from them the most (Wilson 1987). Highway construction contributed to the relocation of jobs—primarily in manufacturing—to the suburbs, while cities rarely invested in public transportation infrastructure to reach those employers (Sharkey 2013). So, while the highways displaced people and destroyed neighborhoods, they did not make racially segregated neighborhoods more connected to economic opportunities. The damaging economic effects of highway construction have also persisted in the decades following

their construction. For example, property values are lower for houses directly adjacent to large highways (Allen, Austin, and Swaleheen 2015).

In addition to the historical social burdens placed on neighborhoods near highways, highway construction generated persistent environmental burdens on neighborhoods. The most prominent form of environmental burden is traffic-related airborne particulate matter (PM). PM can cause numerous health problems such as respiratory, pulmonary, and cardiovascular diseases and death (Boothe and Shendell 2008). Studies have found traffic-related pollution could also influence mental health outcomes (Pun, Manjourides, and Suh 2019), childhood academic performance (Stenson et al. 2021), and adverse birth outcomes (Feng et al. 2016). Some of these negative effects can occur at very low levels of PM exposure—even lower than some published regulatory standards (Feng et al. 2016). In addition to air pollution, noise pollution from highways has also been documented to have negative physical health and psychological effects on people (Stansfeld, Haines, and Brown 2000). Another environmental risk is increased pedestrian deaths in highway-adjacent neighborhoods, caused by restructuring of the surrounding transportation environment (Nehiba and Tyndall 2023).

Air pollution from highways adds to other industrial and commercial sources that disproportionately impact neighborhoods of color. Jones et al. (2014) used fixed-air sensors in neighborhoods across six cities to find that participants in neighborhoods that were more than 60 percent White had lower levels of air pollution than neighborhoods that were less than 25 percent White. They also find that majority-Hispanic neighborhoods have higher levels of air pollution. In a study of 196 cities across the U.S., Greiner and McKane (2022) show that PM levels are higher in census tracts that were redlined in the 1930s. This coincides with additional literature showing higher

levels of air pollution in more racially segregated neighborhood contexts (Woo et al. 2019). Research has also found evidence of Latinx and Asian populations being correlated with disproportionate levels of PM pollution exposure (Liévanos 2019). Multiple studies have also found that exposure to highway-related pollution has a stronger correlation with racial and ethnic demographics than social class or education-related variables (Boehmer et al. 2013; Tian, Xue, and Barzyk 2013).

This existing research has documented the social and environmental burdens of highway proximity on neighborhoods of color. While social movements noted that those mid-century projects represented "white men's roads through black men's homes" (Archer 2020), there have been few systematic efforts to empirically measure the claim. One notable study in Los Angeles finds that commuters from majority White tracts travel through majority non-White tracts at a much greater rate than the inverse—thereby disproportionately contributing to increased pollution burden in non-White tracts (Boeing, Lu, and Pilgram 2023). Specifically, commuters from non-White tracts do not travel through majority White tracts at proportional levels of majority White tract commuters traveling through majority non-White tracts. Their analysis relied on an estimation of commuting patterns by mapping Census estimates of home-work census blocks onto the tract level. Our data differs in that it is derived from of a representative sample of actual location-based data, rather than travel routes estimated from surveys. Further, our analysis centers on a smaller city (Omaha, Nebraska)—which may be less of an outlier than Los Angeles and more similar to other mid-sized city contexts across the U.S.

This literature illustrates the importance of considering an environmentalized urban sociology, which considers social and environmental inequities together (Angelo and Greenberg 2023). Bullard (2003) was an early pioneer of this approach, specifically

as it relates to transportation inequity. He notes that transportation outcomes fall under three broad categories of inequity: (1) procedural inequity around who makes decisions about transportation projects; (2) geographic inequity related to the positive and negative geographic impacts of transportation; and (3) social inequity related to how transportation benefits and burdens are unequally distributed and can sometimes cause generational impacts. Our study includes a mixed method study design with two forms of analysis: (1) a historical case study of three highway development projects in Omaha, and (2) unique descriptive statistics comparing the modern racial make-up of drivers' home neighborhoods compared to the racial make-up of highway-adjacent neighborhoods. This work aims to elucidate each of Bullard's (2003) three forms of transportation inequity—tracing differences in historical decision-making processes across highway projects and connecting that procedural inequity to modern geographic and social inequity on who benefits from and is burdened by those highway projects.

Case Study: Highways and Race in Omaha

Case Study Methods

For the historical case study of three highway development projects in Omaha, we relied on primary sources such as local newspapers. There are three primary databases of historical newspapers that we accessed. First, we accessed the Omaha World Herald Collection with Historical Archives (1878–Present) on NewsBank Databases. The Omaha World Herald (1878–Present) is the largest daily newspaper in Omaha. Second, we accessed the Gilbert M. and Martha H. Hitchcock Omaha Star Digital Archives (1938–2011) also on NewsBank Databases. The Omaha Star (1938–Present) is a newspaper based in North Omaha, a historically Black community, and is the only remaining African-American newspaper in Omaha. Third, we accessed the World Collection on Newspapers.com, which includes many newspapers for specific

neighborhoods. In this database, we collected articles in: (a) The Omaha Evening Bee-News (1872-1937), which was a daily regional newspaper and over time developed a reputation as a sensationalist tabloid newspaper associated with the Nebraska Republican Party; (b) The South Omaha Sun (1925-1963), a weekly newspaper for the South Omaha neighborhood; (c) The North Omaha Booster, renamed The North Omaha Sun (access to 1950-1958), a weekly newspaper for the North Omaha neighborhood; (d) The Benson Times, renamed The Benson Sun (1907-1963), a weekly newspaper for the Benson neighborhood and surrounding neighborhoods in west Omaha; and (e) The West Omaha and Dundee Sun (1968), a weekly newspaper for the Dundee neighborhood and neighborhoods further in west Omaha.

We included keyword searches in these databases for the terms "freeway," "highway," and "expressway" and also in conjunction with terms "construction," "planning," "North (Omaha)," "South (Omaha)," "West (Omaha)," and "West Dodge." Many names for the three planned highways were used by different actors over the years. When a new term was found in an article to refer to one of these three highways, that new term was then searched through these three databases. Keywords of key actors' names, governmental offices, or organizations were also searched to find more articles about particular moments in highway planning and construction. Key articles informing our understanding of these three case studies spanned from May 1935 to the present, with most South Freeway articles in 1957–1963; most North Freeway articles in 1973–1982; and most West Dodge Expressway articles in 1958–1970 and 1998–2006.

Finally, these newspaper databases were supplemented by primary sources available through the Center for Public Affairs Research at DigitalCommons@UNO Publication Archives (1963–2000), which was helpful for accessing published research reports that were contracted by local governmental agencies to study planned highway

routes. To highlight some of the impacts of the highway projects, we also use historic satellite imagery supplied by Douglas County, Nebraska to provide a visual summary of neighborhoods before and after construction of the three highway projects.

Case Study Results

The city of Omaha, Nebraska provides a unique case setting to observe relative distribution environmental inequality related to highways. The city has a long legacy of racial segregation—with a historically Black and redlined North Omaha, a majority-Hispanic South Omaha, and wealthy white enclaves in West Omaha. Further, each of these sections of the city had highway projects constructed in the last 50 years—which allows for a comparative analysis of each highway's surrounding neighborhoods and the neighborhoods of drivers that use the highway.

According to the 2020 U.S. Census, Omaha is the 40th most populated city in the country. It also contains a history of racial segregation that is characteristic of other cities in the U.S. For example, Omaha's map of redlining in the 1930s designates majority-Black North Omaha as "hazardous" for investment (Fletcher Sasse 2016; Strand 2016). North Omaha also experienced systematic disinvestment, white flight following school desegregation, over-policing, and other dynamics common in Black neighborhoods (Fletcher Sasse 2016). South Omaha is the site of Omaha's industrial meatpacking operations. Historically, the area had vast stockyards—which eventually transformed into more modernized meatpacking plants. The presence of industry in South Omaha made it a popular destination for immigrants. Polish and Greek immigrants in the early 1900s were replaced by waves of immigrants from Central America and Mexico in the latter half of the 20th century. The area now has a distinct cultural identity—and many storefront signs in South Omaha are in Spanish. The student body at Omaha South High School is 85 percent Hispanic and the school's

mascot is the Packers—a nod to the area's industrial identity. South Omaha has also dealt with disinvestment typical of many immigrant communities. For example, a decision by the city of Omaha to require citizenship as a condition for pandemic rental assistance likely prohibited some South Omaha residents from accessing the aid (Gonzalez 2022).

West Omaha is majority-White—featuring a sprawl of large residential suburban areas. During the latter part of the 20th century, private developers of suburban properties used "sanitary and improvement districts" (SIDs) to receive tax-exempt public financing for the roads, sewers and other infrastructure, including private clubs (Strand 2016). Developers maximized their profits via lower interest rates, tax exemption, and favorable bankruptcy rules while producing racially exclusive housing for the affluent. The SIDs were governed by developers and repayment of the municipal bonds they issued (which included profit for the developers) was eventually shared by all taxpayers in the city. As Strand (2016:227) describes: "While Black residents were channeled to the 'Near North Side,' White residents who could afford larger, newer, more expensive homes and the expense of maintaining a private automobile availed themselves of new suburban homes in SIDs west of the Omaha city limits that eventually, through annexation, became western Omaha. When SID debt was assumed by City of Omaha taxpayers at large, Black taxpayers contributed to paying off that debt. Black taxpayers in Omaha thus helped to subsidize western SID development from which they were excluded."

Figure 1 highlights how the major highway construction projects in our study intersect with differing neighborhood racial contexts in Douglas County, Nebraska. The North Freeway intersects majority Black tracts, the Kennedy Freeway bisects majority

Hispanic neighborhoods, and the West Dodge Expressway serves the majority White west Omaha.

[Figure 1 about here]

Controversy and Power Around Three Highway Projects

Planning for each of these three highway projects reflected varying power relationships between stakeholders, who want to build and use the freeway, and residents and businesses, who would be displaced or impacted by highway construction (Annor 1970). North, South, and West highways were first proposed in Omaha in the mid-1950s, primarily to alleviate traffic congestion in the city, but also to move cattle more quickly in and out of the stockyards and increase the number of emergency military routes (Anon 1957b; Fletcher Sasse 2016; Montag 2015). The planning for each of the three projects weighed concerns about community impact differently.

The Kennedy Freeway was the first of the three highways to be constructed. The process for selecting the project route incorporated the concerns of local residents.[1] Initially, planners routed Kennedy Freeway through the core of "stable" South Omaha residential neighborhoods and South Omaha's business district (Anon 1957a). However, community members and engineer consultants voiced their concerns and supported an alternative route that steered the freeway closer to the industrial traffic of the packinghouses and stockyards (Anon 1958). Government officials approved the alternative route, moved forward with construction, and finished the freeway in 1966.

Planning and construction for the North Freeway was a longer process, with many residents noting "the serious degenerative impact that the uncertainty surrounding

[1] At the time of the Kennedy Freeway planning and construction, many ethnic populations from countries such as Mexico, Italy, Greece, Poland, and Czechoslovakia lived and worked together in South Omaha (Arbelaez 2007). It wasn't until the latter half of the 1900s that Hispanic residents became the majority in South Omaha.

the North Freeway has had on North Omaha over…20 years" (Henningson, Durham, and Richardson, Inc. 1975:I-2). In contrast to the Kennedy Freeway, officials approved a route that was not supported by residents of the surrounding community—as they foresaw the displacement of homes and businesses to come. Engineering consultants studied three routes for the potential North Freeway. The Central Alignment was expected to dislocate "the most residences and businesses and severs more neighborhood areas" (Henningson, Durham, and Richardson, Inc. 1975:I-2). The West Alignment was the cheapest route to construct, while a proposed East Alignment was slightly more expensive than the Central Alignment, but dislocated the fewest residences and businesses and had the most public support. Despite being more disruptive to the predominantly-Black neighborhoods affected, the Central Alignment was the one approved and built, with cost cited as a rationale (Anon 1980).

Residents continued to fight the North Freeway even as construction continued. Ernie Chambers, the state senator of the impacted area, argued the North Freeway "devalues property, divides the neighborhood and destroys our community" (Thompson 1980:4). He and others fought the highway construction in the Nebraska Legislature and sought to sway powerful local stakeholders and federal funders (Anon 1982; Thomas 1981). Fights over freeway construction continued even after most of the neighborhood was demolished, noting that the impacts were not just in the destruction of the local neighborhood but the actual harm of the freeway itself in physically dividing the community and in "noise and air pollution" (King and Kelly 1981:2). Nonetheless, the North Freeway finally opened in 1988.

While the West Dodge Expressway was also proposed in the mid-1950s, its construction was fought and largely stopped by the predominantly-white and wealthy neighborhoods that would have been impacted. Plans for a westward freeway were

repeatedly made, shown to be highly controversial among residents, and subsequently shelved (Howe 1964; Landale 1958; Silber 1961). Planners originally routed the West Expressway to go through Dundee, one of the wealthiest residential neighborhoods in Omaha and predominantly-white (Anon 1961). Similar to residents fighting the North Freeway, residents of this wealthy neighborhood were also concerned with pollution and health effects from living near the West Expressway (Anon 1970). Planners eventually widened the main east-west road through Dundee, but never developed it into an expressway as originally proposed. It was not until 2006 that a controlled-access overpass highway was finally completed to ease traffic issues. The West Dodge Expressway only covers two miles of a commercial area—well beyond the wealthy residential neighborhoods where it was originally proposed.

Diverging Impacts of Three Highway Projects

The construction of the North Freeway had many of the negative effects documented in the literature on Black communities and highway development. Local historians estimated that 2,000 buildings were destroyed to clear way for the highway (Fletcher Sasse 2016). The project severed community access to important local resources—such as a thriving Black-owned business district and Metropolitan Community College. When completed, the highway did not feature adequate on- or off-ramps into the neighborhood—disincentivizing economic development or investment into local businesses. In 2019, a community theater in north Omaha staged a play portraying how the North Freeway destroyed tight-knit, but politically disenfranchised, neighborhoods (Biga 2019). Figure 2 shows aerial satellite imagery illustrating the impact of highway construction. The image from 1962 shows a neatly-gridded residential neighborhood, while the image from 1993 highlights the displacement of that area.

[Figure 2 about here]

The construction of Kennedy Freeway in South Omaha had fewer dramatic impacts. The alternate route for the highway that was eventually built mostly follows railroad tracks and industrial areas—rather than directly dividing and displacing thousands of residents, as the original proposed route would have done. Planners used existing railroad infrastructure as one of the main criteria used to site highways in the mid-20th century, which may contextualize why South Omaha citizens were able to reroute the highway away from the core of their community (DiMento and Ellis 2012). However, this led to the highway compounding other sources of industrial pollution such as the Union-Pacific railroads and the meatpacking plants. The construction of the Kennedy Freeway allowed easier access to downtown Omaha from the bordering community of Bellevue, Nebraska—home to the Offutt Air Force Base. Similar to the North Freeway, the Kennedy Freeway allowed commuters from Bellevue to quickly bypass minority neighborhoods on their way to downtown Omaha. Figure 3 shows how the highway in 1993 runs along a similar curvature as the railroad from 1962. The highway narrowly avoids S. 24th Street, the historic core of South Omaha, just one block to the East.

[Figure 3 about here]

The West Dodge Expressway was completed in 2006 to speed up access from the suburbs of West Omaha to midtown and downtown Omaha. The $53 million, two-mile long expressway was built on top of Dodge Street—a main thoroughfare that borders areas that were already commercial, rather than residential. Figure 4 below illustrates how this highway construction project minimized impact on surrounding properties by being constructed on top of the existing road and adjacent to commercial, rather than residential, areas.

[Figure 4 about here]

These three highway projects—and the processes around their development—highlights procedural inequity related to highway development in the city. Thousands of vehicles pass through these neighborhoods each day—and it is important for transportation inequality and injustice to understand more about the neighborhoods that benefit and are burdened from each project. The history of these three highways show diverging histories and impacts: (1) major displacement in North Omaha, (2) compounding industrial risks in South Omaha, and (3) minimal impact in West Omaha. The histories of these highways suggest the presence of relative distribution environmental inequality: they are often constructed to make access and transportation easier between places that are wealthier and Whiter. However, there is no empirical data in past research or reports to examine whether that is true and provide an estimate of potential inequities that exist. Therefore, we complement this case study with an analysis of descriptive statistics related to the racial characteristics of highway drivers' neighborhoods compared to the racial demographics of highway-adjacent neighborhoods across these three projects.

Descriptive Analysis

Streetlight Data and Methods

One of the unique empirical contributions of this study is to provide descriptive statistics about the residential neighborhoods of drivers on each of the three selected highway segments and Omaha—and compare those contexts to the demographics of the neighborhoods bordering the highways. The data on drivers' home neighborhoods comes from a location-based services data provider called Streetlight. Streetlight specializes in providing transportation data to local government agencies in support of urban and transportation planning. Streetlight acquires location based services data from

digital devices, primarily mobile phones—as well as location data connected to vehicles—that can trace individuals' and vehicles' movements throughout the day and processes samples into average trip patterns (Streetlight 2022b, 2022a). They obtain information on where the phone or vehicle "spends the night" before—and then collects 2020 U.S. census block-level demographic data for that location. Combined with data on where the phone or vehicle travels throughout the day, Streetlight generates average demographic estimates of the users of roadways during specified time periods.[2] Using the Streetlight interface, our research team selected street segments on each of the three highways and received a file with the average neighborhood racial demographics of vehicles and phones that traveled through those segments from March 1st, 2019 to April 30th, 2019 and September 1st, 2019 to October 31st, 2019. We selected these months as representative averages of 2019 prior to the onset of COVID-19, which disrupted normal traffic patterns.

It is important to note that these average neighborhood demographics are not reflections of individuals who travel on the highway. Individual demographics are not provided by Streetlight for privacy reasons—and instead the service provides data associated with the driver's census block.[3] However, this comparison is appropriate given that literature on relative distribution environmental inequality and uneven relational development considers how some *places* benefit at the expense of other

[2] The sample includes devices from across North America and thus includes not only commuters within the city or county but also commercial vehicle trips.

[3] Streetlight data is exempt from institutional review board approval because it is a secondary use of existing data, and therefore is not human subjects research. Streetlight also takes many steps to ensure that individuals and their movements cannot be identified in their data. For example, the company automatically flags queries containing street segments below a minimum threshold of 50 trips per month for manual privacy review. Any data that could potentially cross-referenced to identify individuals are censored. All Streetlight users are also contractually required to agree they will not attempt to use the data to identify individuals.

places (Seamster and Purifoy 2021). Other researchers have demonstrated the utility of this method of demographic estimation through location-based data for studying racial and income differences in mobility and spatial segregation within cities (Moro et al. 2021; Yabe et al. 2023). Streetlight has also published analysis showing the representativeness of their data models for minority populations to be similar or more reliable than the National Highway Travel Survey (Streetlight 2020).

Streetlight only provides summary statistics for road segments, which limits our analysis to sharing descriptive statistics below. Due to the nature of this data, we are not able to calculate inferential statistics—such as a chi-square test—to examine whether the differences between drivers' neighborhoods and highway-adjacent neighborhoods are statistically significant. We are provided only the mean racial demographics and the average number of daily drivers from Streetlight for each highway segment—and no other information. The Streetlight data is estimated from a sample size of 182,000 devices and more than 1.9 million trips. Therefore, the estimated mean racial demographics of drivers' neighborhoods have sufficiently large sample sizes to be accurate. Likewise, U.S. Census estimates of tract-level racial demographics are reliable—and the data for highway-adjacent neighborhoods has face validity, since the demographics match the historical character of each neighborhood based on racial segregation patterns.

For the purposes of our study, we are limited to racial categorizations provided by the U.S. Census which includes the following racial categories: White, Black, American Indian, Asian, Pacific Islander, Other Race, and Multiple Races. Ethnicity—which includes Hispanic and non-Hispanic—is a separate variable. We limit the categories to simply non-Hispanic White, Black, and Hispanic—since these are the three largest racial categories and those most relevant to our analysis of segregated

neighborhoods. We gathered 2020 U.S. Census data on the census tracts that intersect the highway projects from the National Historical Geographic Information System (Manson et al. 2023).

Our analytic approach below simply aims to examine whether the historical patterns of uneven highway development lead to modern-day racial inequities between the places that benefit from and are burdened by highway proximity. We would expect the North Freeway and Kennedy Freeway drivers' neighborhoods to have larger percentages of White residents than in neighborhoods adjacent to those highways.

Streetlight Results

Table 1 provides average annual traffic figures for each highway.

[Table 1]

Figure 5 shows how the racial demographics of drivers' neighborhoods differ from neighborhoods bordering the highways. First, the North Freeway contains drivers from less diverse neighborhoods than the neighborhoods surrounding the freeway. The neighborhoods surrounding the freeway are 40.17 percent Black, while the neighborhoods that drivers live in are just 18.88 percent Black, on average. As expected, drivers who use the North Freeway live in more White neighborhoods than neighborhoods adjacent to the freeway.

The Kennedy Freeway in South Omaha has an even starker racial mismatch between drivers' neighborhoods and surrounding neighborhoods. Drivers on the Kennedy Freeway are from neighborhoods that are only 19.24 percent Hispanic, on average—while the bordering neighborhoods average 69.90 percent Hispanic residents. Drivers' neighborhoods are 68.86 percent non-Hispanic White, while the neighborhoods bordering the highways are only made up of 30.17 percent White residents.

However, on the Dodge Street Expressway in West Omaha, the driver neighborhood demographics are nearly identical to the surrounding neighborhood demographics—especially in the most prominent racial category, White. Drivers' neighborhoods have a slightly higher Hispanic make-up (a 2.48 percentage point difference) and a slightly lower Black make-up (a 1.14 percentage point difference) than highway-adjacent neighborhoods.

[Figure 5 about here]

Discussion

Most studies of distributive environmental inequality only consider the disproportionate presence of environmental harm in disadvantaged communities. Our work expands the study of relative distribution environmental inequality by considering which places benefit from highway-related pollution in comparison to those who are burdened. The case study of three highway projects in Omaha shows the divergent power relationships, historical dynamics, and impacts from highway construction in different areas of the city. Further, the results from the Streetlight data analysis show that drivers from less racially diverse neighborhoods are both contributing to the pollution that disproportionately impacts neighborhoods of color *and* benefit from the pollution more via the use of the highway. While historical and/or qualitative evidence has documented "white men's roads through Black men's homes", this study provides empirical support and specificity for those claims in one city in the U.S.

The mismatch between drivers and highway-adjacent neighborhoods is most stark in South Omaha where there is a near-50 percentage point gap between the percent Hispanic in neighborhoods and the neighborhoods of drivers that use the Kennedy Freeway. This dynamic is reflected in North Omaha, as well—to a lesser degree (40%

Black in highway-adjacent neighborhoods, but only 18.8% Black in drivers' neighborhoods). However, the West Dodge Expressway in West Omaha shows that it is possible for highway drivers' neighborhood demographics to match areas adjacent to the highway—an equity that only exists in majority white West Omaha. Similar to the findings of Boeing et al. (2023), these data show that drivers from majority White neighborhoods contribute to pollution in majority-minority neighborhoods—but the reverse is not documented.

One limitation of this data is that it does not necessarily reflect environmental conditions or exposures in each of these neighborhoods. Table 1 shows that the highway in West Omaha has significantly more traffic on a daily basis than the highways in racially segregated North and South Omaha. So, while there may be fewer racial disparities between drivers and highway adjacent neighborhoods, there could be more negative effects of pollution from that highway. However, the case study—and Figure 5—show that the elevation pollution from more traffic may be mitigated by the highway being directly bordered by commercial rather than residential land uses. This is why it is important to understand the historical, social, and geographic context for these cases.

Another limitation of this study is that these results could be specific to places such as Omaha—where the concentration of minority-majority neighborhoods in the downtown area is unique for the broader region. The city's core is surrounded by suburban and/or rural majority-White areas such as eastern Iowa and the counties bordering Omaha. Therefore, highway projects facilitate connectivity between those places and downtown Omaha. These dynamics may be different in other metropolitan contexts where suburbs are diversifying or where the baseline of racial make-up in the region is more diverse. However, utility improvement districts in exurban Houston do share similarities to Omaha's SIDs in that they have been used to shift costs between

jurisdictions in ways that favor majority white over non-white communities (Seamster and Purifoy 2021). Additional research could use location-based services data across cities to see how the trends we document in Omaha are similar or different across other U.S. contexts.

One of the aims of this paper is to also inspire sociologists to consider the methodological benefits of location-based services data such as Streetlight. These data allow researchers to understand the flows of people across space—similar to a recent focus in the literature on racial and class spatial segregation during daily life (Moro et al. 2021; Yabe et al. 2023). While Streetlight compiles third-party data from other services, sociologists who collaborate with computer scientists or other location based services data experts may be able to access raw data that can produce more predictive or inferential analysis, rather than simple descriptive statistics.

In recent years, the U.S. federal government has increasingly acknowledged the racial inequalities built into the highway system. Millions of dollars in grant programs have been devoted to addressing mobility and economic development harms and air pollution reductions in disadvantaged communities (Stehlin 2023).[4] Many policy solutions to remedy or reduce highway-related pollution have been proposed: (1) increasing funding for public transportation, (2) having higher fuel efficiency standards in vehicles, (3) building housing near jobs to shorten commuting distance, (4) incentivizing people to work from home and drive less, and (5) removing, burying, or capping highways (Boeing et al. 2023; Stehlin 2023). However, the implementation of these policies—and the potential political conflict they may generate—will require local

[4] The Metropolitan Area Planning Agency, City of Omaha, and community development group SPARK were selected in 2023 for a US DOT Thriving Communities Program to study to the impacts of 75 North.

governments to understand not just who highways harm, but the interests of those who benefit from them. For example, cleaner or more efficient public transportation funding does not necessarily lead to more equitable outcomes—because it is often not built in areas that would benefit people who need it the most (Galaskiewicz, Anderson, and Thompson-Dyck 2021).[5] Further, Curran (2018) notes in terms of the moral legitimacy of different environmental inequalities, those "in which the advantages of some cause the disadvantages of others… can be picked out as a basis for significant social and political change" (Curran 2018:313). The relative distribution of environmental harms and benefits may help policymakers understand how interest groups may respond to proposals to remove, bury, or cap highways—with communities pursuing plans that have different impacts on inequality reductions (Stehlin 2023).

Conclusion

In summary, an understanding of the environmental and social burdens and benefits of transportation-related inequalities are an important aspect of environmental inequality. Transportation projects such as highway infrastructure do not only confer advantages or disadvantages to one social group or place—instead there are deep-rooted relationships between places. When social forces coalesce to distribute goods and bads across space, some people and places can benefit at the expense of others. Further, new location-based services data that track the movement of people across places can help better measure relative distribution environmental inequality and relational uneven development.

[5] As an example: the largest recent investments in public transportation in Omaha are along it's East-West corridor, including a nearly half-billion-dollar streetcar between midtown and downtown Omaha to drive urban real estate investment and development, alleviate parking concerns in the city center and bolster tourism.

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Tables

Table 1. Average Daily Traffic on Each Highway Project	
North Freeway	17,583.75
Kennedy Freeway	28,202.02
West Dodge Expressway	44,417.50
Note: Data provided based on average number of vehicles or phones traveling through each highway from March 1, 2019 to April 30, 2019 and September 1 to October 31, 2019.	

Figures

Figure 1:



Figure 2 :



1962 1993

Note: Aerial imagery provided by Douglas County, Nebraska

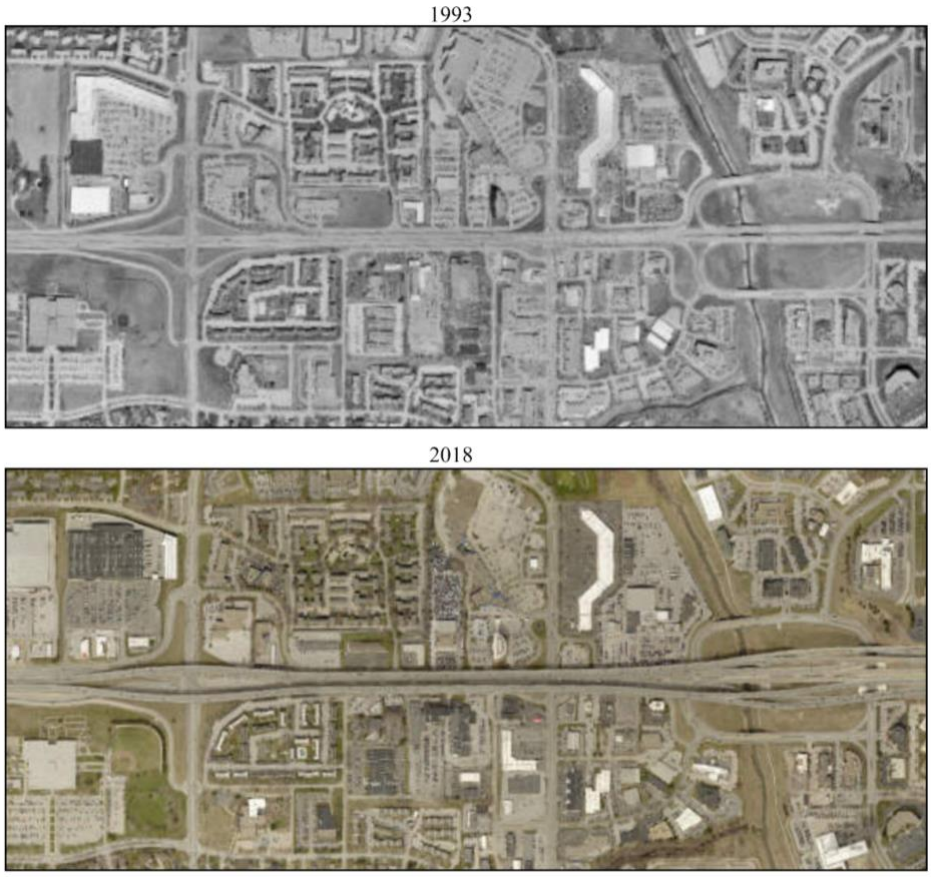
Figure 3:



1962 1993

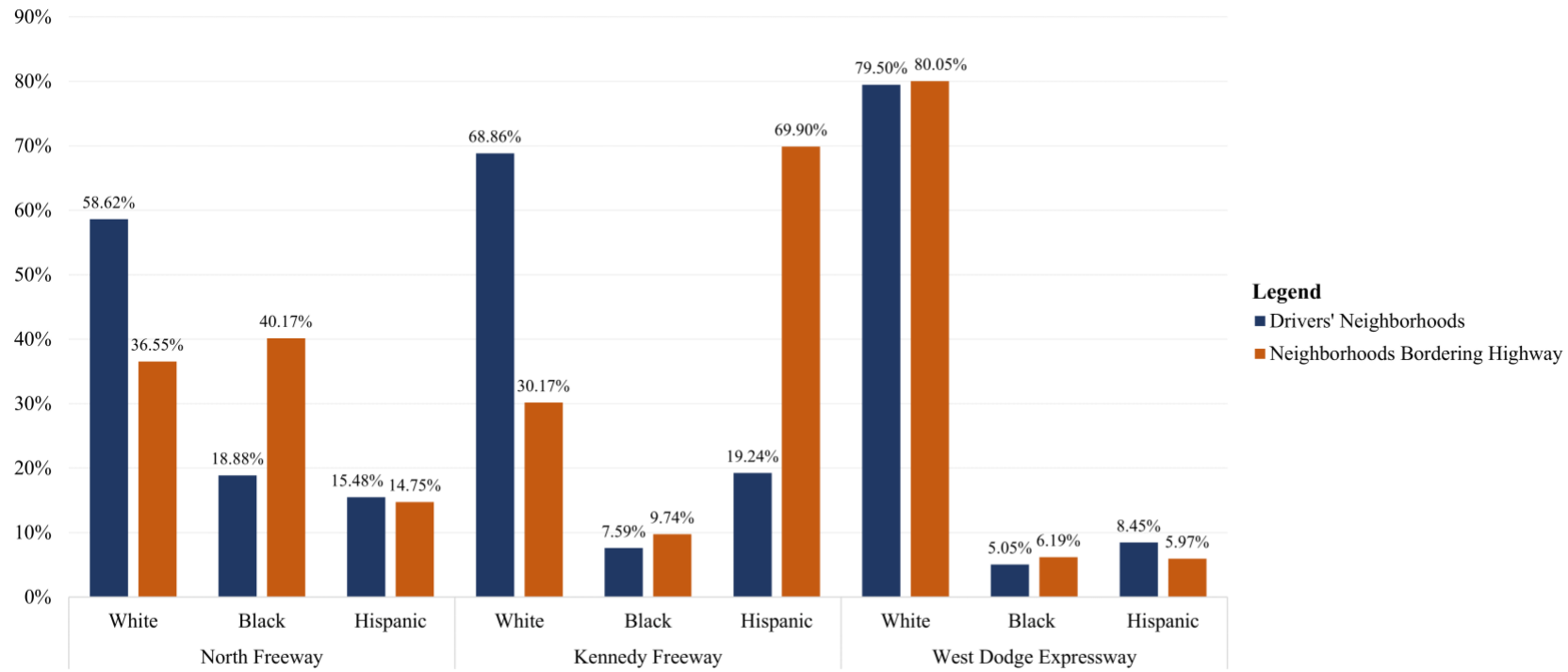
Note: Aerial imagery provided by Douglas County, Nebraska.

Figure 4:



Note: Aerial imagery provided by Douglas County, Nebraska

Figure 5.


90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
58.62%
36.55%
18.88%
40.17%
15.48%
14.75%
68.86%
30.17%
7.59%
9.74%
19.24%
69.90%
79.50%
80.05%
5.05%
6.19%
8.45%
5.97%
White
Black
Hispanic
North Freeway
White
Black
Hispanic
Kennedy Freeway
White
Black
Hispanic
West Dodge Expressway
Legend
Drivers' Neighborhoods
Neighborhoods Bordering Highway

Figures Captions List

Figure 1. Select Highway Projects and Census Tract Racial Demographics in Douglas County (Omaha), Nebraska

Figure 2. North Omaha Before and After Highway Construction

Figure 3. South Omaha Before and After Freeway Construction

Figure 4. West Omaha Before and After Highway Construction

Figure 5. Comparison of Racial Demographics in Neighborhoods Bordering Highway Projects and Drivers' Neighborhoods

Exhibit 10

April 22, 2025 Tahoe Clean Air comment letter to TRPA re Wildfire Evacuation Planning

TAHOECLEANAIR.ORG

April 22, 2025

Dear TRPA Governing Board,

Please make this public comment part of the minutes and the record in connection with the April 24, 2025 TRPA Governing Board Retreat, Agenda Item XVI, Public Comment, **as connected** with Agenda Item XVII, Strategic Planning Session, TRPA Opportunities and Challenges: "**The Next Four Years".**

1. In the interest of Tahoe Basin life safety including as connected with land use planning, the TRPA must develop a comprehensive roadway-by-roadway wildfire evacuation capacity timing analysis, based on the best available data, and best and readily achievable technology, indicating how long it will take to get residents and visitors, safely out of the basin during a variety of fast moving **no-notice**[1] weather[2] and slope driven wildfire evacuation timing scenarios.

This, as requested by five Tahoe Conservation groups, in a February 11, 2025 letter[3] to the TRPA concerning the urgent need for TRPA to provide such an analysis.

NO GOVERNMENT AGENCY OR DEVELOPER, INCLUDING THE TRPA AND ITS PARTNER AGENCIES, SHOULD MAKE IT HARDER FOR ANY PERSON TO ESCAPE DEADLY FIRES.

Yet TRPA continues its life-threatening dogmatic quest for accelerated approval of TRPA "partner" Area Plan amendments within already dense wildfire evacuation "Choke Point[4]" town centers. This, without providing a cumulatively comprehensive EIS/EIR properly analyzing the effects of a fast moving no-notice wildfire, including the impact of wildfire evacuation.

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[1] US Department of Transportation, Federal Highway Administration - A **no-notice** wildfire evacuation refers to an evacuation that occurs with little or no warning due to an unexpected or rapidly developing fire incident. These situations require quick action and immediate response because there is not enough time for emergency responders to prepare or for residents to receive advance notice. **No-notice** evacuations can be particularly challenging because they demand rapid assessment, quick decision-making, and efficient coordination to ensure the safety of affected populations. Examples of such incidents include wildfires that suddenly change direction and or move toward populated areas.

2 National Weather Service definition of a Red Flag Warning Day

3 Urgent Evacuation Timing Analysis Letter from five Tahoe Conservation Groups to the TRPA

4 March 18, 2025 Wildfire Choke Point letter to Placer County from retired professional firefighters

Evacuation panic is common during fast moving wildfire no-notice evacuations, which increase within concentrated town center and mixed-use populations. It is common for vehicles and foot traffic to compete for safety during a "sudden surge," adversely degrading over capacity evacuation roadways evacuation times.[5]

TRPA's, and its "partner" agency's dangerous, aggressive priority approvals of increased building height, density, coverage and reduced parking over public safety, within wildfire evacuation "Choke Point" Town Centers and elsewhere in the basin, is perplexing to a reasonable person. This includes aggressive approval of more international destination recreation projects for the purpose of increasing tourism and wallet capture, and approval and support for of major public and private projects, which individually and cumulatively make it harder for California and Nevada residents and visitors to escape deadly fires.

On both the California and Nevada sides of the lake, the dangerous TRPA and "partner" practice of utilizing sham individual project Initial Environmental Checklists (IEC's), and woefully deficient Environmental Assessments (EA's) continue unimpeded with no real oversight. TRPA commonly assists its County Area Plan partners with the environmental analyses process to ensure that the TRPA avoids the EIS requirements under California's Environmental Quality Act (CEQA) all together. The individual project IEC's and EAs, as well as the basin "partner" cabal environmental review process itself, is skillfully designed to avoid a cumulatively comprehensive EIS/EIR process and current practices overwhelmingly result in individual project and code amendment "**findings of no significant effect**." This, without substantial evidence to support such findings.

On the California side, TRPAs' and its "partners'" failure to comprehensively analyze the effects of wildfire, including wildfires effects on evacuation, runs counter to Bonta vs Couty of Lake – October 23, 2024 First Appellate Court District Six Ruling 20241023_docket-A165677-_opinion.pdf.

On the Nevada side of the Lake Tahoe Basin, TRPA and partner agencies continue to prioritize approvals for increased building height, density, and coverage in Town Centers and other areas, including wildfire evacuation "choke points," over public safety and without conducting a comprehensive Environmental Impact Statement (EIS). This approach fails to analyze the individual and cumulative effects of a fast-moving, no-notice wildfire, including its impact on wildfire evacuation . Such actions jeopardize the safety of Nevadans and visitors, violating their rights under Article 1, Section 1 of the Nevada State Constitution, which guarantees the pursuit and protection of safety.

Art 1. Sec 1. ***Inalienable rights.*** *All men are by Nature free and equal and have certain inalienable rights among which are those of enjoying and defending life and liberty; Acquiring, Possessing and Protecting property* ***and pursuing and obtaining safety*** *and happiness[.]*

[5] KTLA 5 / You Tube Video of Cars being bulldozed during the Palisades fire due to drivers panicking and fleeing

Additionally, as applied Tahoe Basin wide, adoption of which will run counter to *TRPA Regional Plan Goal "LU-3.2 Which States: "NO PERSON OR PERSONS SHALL DEVELOP PROPERTY SO AS TO ENDANGER THE PUBLIC HEALTH, SAFETY, AND WELFARE".*

I am providing the TRPA, as done previously, compelling **substantial evidence** from October 2024 Independent Lake Tahoe Basin Wildfire Evacuation Analysis. This advanced, data-driven study demonstrates that any project or code amendment—particularly those increasing human density in wildfire evacuation "choke point" Town Centers or elsewhere—that hinders safe evacuation during a deadly fire will likely prolong evacuation times and exacerbate public safety risks within the Lake Tahoe Basin's already limited roadway network.

The Independent Wildfire Evacuation Analysis meets the definition of new **substantial evidence**, as defined by both the Nevada State Supreme Court Case 25727 (Link here) and CEQA.

The TRPA and its partners, by neglecting to conduct a comprehensive, roadway-by-roadway wildfire evacuation capacity and timing analysis, demonstrate either profound naivety, misinformation, or capture by special interests, and regulatory influences.

By failing to complete such an analysis, TRPA and its partners appear to assume a fast-moving no-notice wildfire under typical Tahoe Basin red flag and slope conditions would differ from the devastating outcomes in Paradise, Lahaina, or Los Angeles fires. In reality, the Basin's limited roadway capacity and likely firebrand storms—igniting spot fires one to three miles ahead of the main fire—would predictably result in even worse consequences.

Instead of conducting comprehensive roadway-by-roadway wildfire evacuation capacity and timing analyses, TRPA and its partner agencies propose mitigations such as Unified Command drills, phased evacuations, and controversial forest thinning with prescribed burning. While these measures may have merit in specific contexts, their effectiveness in improving wildfire evacuation timing lacks substantial evidence[6]. Such claims require validation through a comprehensive Environmental Impact Statement (EIS) process, including a detailed roadway-by-roadway evacuation capacity and timing analysis.

The TRPA and its Area Plan "partners" must consider the Independent Wildfire Evacuation Analysis as new "**substantial evidence**". This, when considering proposed project and code amendment environmental analyses including environmental findings at the planning level.

The Independent Wildfire Evacuation Analysis meets the definition of new **substantial evidence**, as defined by both the Nevada State Supreme Court Case 25727 (Link here) and CEQA.

2. Due to new **substantial evidence** and information, including new environmental reports, changing circumstances, including wildfire frequency and impacts on life safety, and 300 + Regional Plan code amendments since the adoption of the 2012 Regional Plan EIS, TRPA must complete a new cumulatively

[6] Bark vs USFS

comprehensive EIS. New and overwhelming substantial evidence of wildfire risks and evacuation challenges, as well as significant degradation to the Lake Tahoe environment and microplastics, were not available at the time of the 2012 TRPA Regional Plan and the 2016/2017 Placer TBAP and other years past EIR and Area Plan adoptions—and thusly demands a new and complete EIS/EIR reconsideration. This new information also includes:

- California Attorney General Best Practices for projects within Very High Fire Hazard Severity Zones (VHFHSZ) here
- Lake Tahoe has higher concentration of plastics than Ocean Trash heap – Los Angeles Times – July 14, 2023 By Cari Spencer
- A Tarnished Jewel – March 2025 by Renowned Environmental Reporter Julie Cart – and Natasha Uzcategui-Liggett Cal Matters.
- Let's not hand over Lake Tahoe to business interests (link here) by Pamela Mahoney Tsigdinos RGJ April 22, 2025 (**Link here**)
- Los Angeles Times Cari Spencer July 14, 2023, Article - Lake Tahoe has higher concentration of microplastics than ocean trash heap.
- What's Changed in Tahoe – Nevada Current, Dec 11. 2023 by Pamela Mahoney Tsigdinos
- March 25, 2025 letter to TRPA from Don Mooney, ESQ
- February 27, 2024 Letter to TRPA from Don Mooney, ESQ
- KTLA 5 / You Tube Video of Cars being bulldozed during the Palisades fire due to drivers panicking and fleeing the scene.
- KCRA News 3 – Where the Camp Fire Victims Died https://www.kcra.com/article/these-are-the-victims-of-camp-fire/32885128
- You Tube – Paradise Lost CHP Officers recall the tragedy. https://www.youtube.com/watch?v=JSAHEhtlA-0
- October 2023 Opposition to Placer County 2023 Tahoe Basin Area Plan (TBAP) and EIR Addendum Letter by four Lake Tahoe Conservation Groups here
- Public Comment - October 16, 2022, to Placer County Board of Supervisors Public Hearing – Agenda Item 3. From the Sierra Club Tahoe Area Group, North Tahoe Preservation Alliance, Friends of the West Shore and TahoeCleanAir.org here
- Placer County Writ of Mandate - FRIENDS OF THE WEST SHORE, TAHOECLEARNAIR.ORG; AND NORTH TAHOE PRESERVATION ALLIANCE V COUNTY OF PLACER; PLACER COUNTY BOARD OF

SUPERVISORS CEQA Code, § 21000 https://drive.google.com/file/d/1K_4MGJ0YHCw1ZDBQfsBp__hoCmTocWuG/view?usp=sharing

- Ascent Environmental - Evacuation Pages from 2017/2026 Placer County EIS here, Page 3-1.35 states that while fuels reduction policies may help with some wildfire behavior, **such policies do not directly affect the issue of emergency evacuation.**.
- North Tahoe Preservation Alliance March 23, 2025 – TRPA Public Comment concerning the Placer Amendments.
- Pamela Tisigdinos March 23, 2025 Public Comment to the TRPA - Item VII B: Amendments to Placer County's Tahoe Basin Area Plan.
- Numerous Tahoe Basin News Articles by Nevada Tahoe resident Pamela Mahoney Tsigdinos
- PALISADES, CA (FORMALLY SQUAW VALLEY) SIERRA WATCH, LEAGUE TO SAVE LAKE TAHOE V PLACER COUNTY

a. https://www.sierrawatch.org/palisades-tahoe-seeks-exception-to-fire-safe-regulations/

b. https://www.sfgate.com/renotahoe/article/league-lake-tahoe-sues-placer-county-palisades-19962119.php

- USFS Basin Wide Trails Plan
- NDOT and "partner" US 50 East shore Management Plan without an up to date cumulatively comprehensive EIS. See TahoeCleanAir.org's plea for a comprehensive EIS based on current and changed cumulative circumstances here
- Proposed Douglas County Hospital Project
- Proposed USFS Zephyr Cove expansion plan
- Numerous major resort and large projects throughout the Basin

Additionally

TahoeCleanAir.org hereby adopts and re-submits the following comments by Niobe Burden Austere, as previously submitted to the TRPA by Niobe.

Start Niobe Burden Auster's previous TRPA comment here.

I am submitting this public comment to highlight significant concerns regarding the findings of the **Independent Peer Review conducted by the Tahoe Science Advisory Council (TSAC)** and the **lack of public transparency** in acknowledging these findings within the **2023 Draft TRPA Environmental Threshold Report or presentations to you at your last Governing Board meeting on February 26 2025**.

The TSAC review identified **critical scientific and methodological issues** in the assessment of environmental thresholds across many of the categories. These issues include **data inconsistencies, methodological shortcomings, outdated references, and vague or contradictory status determinations**—all of which undermine the credibility of TRPA's threshold evaluation process.

Despite these substantive concerns, the **2023 TRPA Environmental Threshold Report presentation to you by TRPA staff did not explicitly recognize or address the findings of this peer review**, limiting public awareness and engagement on these critical matters. There is an attempt to address the issues and recommendations in the review (TRPA Response to Peer Review Report), but the majority TRPA staff are not able to respond with just commentary, but additional resources are necessary. The exclusion of this information not only diminishes transparency but also restricts the ability of stakeholders, including scientists, policymakers, and the broader Tahoe community—to engage in informed discussions about how best to protect the region's environmental health.

Directly from the TSAC Peer Review Summary -

"The disconnect between some standards and management activities reinforces the need (identified by previous threshold evaluation reviews) to revisit the threshold standard system for air quality, noise, recreation, vegetation preservation, and water quality. Revisiting the threshold standards and the associated data sources is needed to ensure TRPA's monitoring programs can best inform implementation actions and monitor the impacts of those investments."

In light of these concerns, I strongly urge TRPA to:

1. **Publicly acknowledge** the findings of the TSAC Peer Review in the final version of the Environmental Threshold Report. (Highlighted Version 76-page Appendix B: attached)
2. **Incorporate the key scientific recommendations** into TRPA's assessment methodologies to ensure that future evaluations are based on **consistent, transparent, and up-to-date data**.
3. **Clearly address and correct data inconsistencies** within the report to enhance public trust and scientific integrity.
4. **Fund additional resources and scientific staff** to help implement recommendations and reliable improvements to the threshold evaluation and related scientific data sources.

==========

Below, I have included a summary of key issues identified by the TSAC Peer Review, along with recommendations for improvement. I respectfully request that TRPA prioritize these concerns to enhance the scientific rigor and transparency of its environmental threshold evaluations.

==========

Summary of Appendix B - Submitted Reviews (from last month's meeting)

Tahoe Science Advisory Council's Independent Peer Review of the 2023 TRPA Environmental Threshold Evaluation

1. Air Quality Threshold Standards

- Reviewed by Dr Naresh Kumar

- Nitrate Deposition - no quantitative indicator? comment by Dr Kumar

Threshold determination - " it is unclear how mid- lake DIN is being measured or analyzed and there are no thresholds or standards reported for these indicators....it is not immediately clear how to evaluate the success or efficacy of the policies, programs and ordinances implemented to reduce generation and transport of nitrogen-containing species in the Tahoe Basin."

Where is quantitative data collected by US Davis (Annual dissolved inorganic nitrogen loading at the mid-lake station?

Reduce Generation and Transport of Nitrate to Achieve Water Quality Standard - comment by Dr Kumar

"Recommend changing to an indicator that can be determined **quantitatively.** For example, why is mid-lake dissolved nitrogen not the right indicator? "

Overarching Reviewer Comments on Indicators - (Dr Naresh Kumar)

- **Lack of Data Representation:**
    - Only one plot is shown per indicator, making it hard to validate conclusions.
    - Many key points are based on data not presented in the report.
- **Trend Analysis Issues:**
    - Trend lines were selected arbitrarily, and starting points may alter the determination.
    - Some trends appear flat rather than increasing or decreasing.
- **Indicator Methodology Concerns:**
    - Some qualitative indicators should be replaced with quantitative ones.
    - Use of a remote site (DL Bliss) for PM2.5 trend analysis is questionable; sub-regional sites should be included.

2. Fisheries Threshold Indicator

- Reviewed by Dr John Umek

Key Issues:

· Habitat Management Number:

o The basis for the adopted management number for habitat is unclear.

o Requires definition of what constitutes suitable stream habitat.

· Indicator Species:

o Explanation needed on why certain benthic macroinvertebrates (BMIs) are used as indicators of fish habitat.

o Further justification is required on how these factors contribute to fish health and population sustainability.

Inconsistencies:

· The rationale behind habitat suitability criteria is not clearly explained.

· There is no discussion of the methodology used to determine which BMIs indicate suitable habitat conditions.

3. Noise Threshold Indicators

- Reviewed by Jeffery Marion

Key Issues:

· Data Presentation Issues:

o The map of monitoring locations lacks a legend explaining symbol color codes.

o Clicking on station locations provides more details, but there is no explanation for the graphs displayed.

o Only two out of nine monitoring dates have available data.

· Graph Interpretation Issues:

o Threshold values (standards) are not shown for direct comparison.

o No percentage comparison of monitoring values above or below thresholds.

o The 15 dB range between tick marks makes precise value interpretation difficult.

· Monitoring Program Improvements:

o Suggests interactive selection of indicators (e.g., noise level by land-use type).

o Avoids redundancy by making data navigation more user-friendly.

· Single Noise Events:

- Single high-noise events were not adequately monitored or assessed.
- These events can have a greater impact on recreation than long-term averaged noise levels.
- Reviewer recommends evaluating both continuous and single-event noise impacts.

Inconsistencies:

- Data interpretation is difficult due to lack of context (thresholds, color codes, legends).
- Key findings are not supported by comprehensive monitoring data (only two out of nine dates were recorded).
- Single high-noise events are largely ignored, despite their potential significance.

4. Recreation Threshold Indicator

Sustainable Recreation and Transportation – Reviewed by Jeffrey Marion

Key Issues:

Reviewers' comments -

For indicators adopted as recommended policies which **lack specific targets the monitoring thresholds are reported as "implemented" and therefore lack status and trend evaluations**. I concur and question why some of these attributes are not specifically monitored.

Recreation Threshold Relevance- This statement references the Regional Plan's objectives for recreational opportunities to **"keep pace" with public demand**. However, **measures reflecting changes in recreation capacities or experiential qualities would be beneficial.**

Rationale Details – Again, the only information provided is that this indicator was implemented, referencing the Regional Plan as a basis for support. Once again, this indicator is of the type that only receives an "implemented" rating with no additional indicators reflecting condition of the recreation facilities or of adjacent natural resources (e.g., soil or vegetation trampling and loss).

a. Recreation Monitoring Program

- Fair Share Distribution of Recreation Capacity - The applicable standard is that "It shall be the policy of the TRPA Governing Body in development of the Regional Plan to establish and ensure **a fair share of the total Basin capacity** for outdoor recreation is available to the general public."

Lack of Measurable Thresholds:

- The recreation standard states that outdoor recreation should be fairly available to the general public, but no specific targets are set.

- Indicators are marked as “implemented” without any status or trend evaluations.
- There is no formal monitoring of facility capacity changes over time.

- Recommendation:
  - Recreation facility capacity changes should be monitored over time.
  - Use road and trail traffic counters to measure actual use.

b. Status and Key Points

- Recreation facility improvements:
  - Between 2020-2023, 28 facilities were created or improved.
  - However, aggregate expansion in visitor capacity is not reported.
  - Public land coverage increased from 70% in the 1970s to 90% today, but data should be broken down into five-year periods for better analysis.
- **Capacity Study Missing:**
  - **The Regional Plan states that recreation should "keep pace" with demand, but there is no capacity study to define a measurable threshold.**

c. Survey Methodology Concerns

- Lack of transparency in survey data:
  - The survey from 2018-2019 reported 92% satisfaction, but:
    - No details on sample size, response rates, or survey methods.
    - No comparison to a standard (e.g., 85% satisfaction threshold).
- Indicators Lack Condition Assessments:
  - No evaluation of recreation facility conditions or environmental impact indicators (e.g., soil erosion, vegetation trampling).

d. EIP Action Priorities

- Shoreline and Trail Improvements:
  - Indicators include public shoreline added and miles of trail developed, but:
    - Data is scattered across multiple web pages, making it confusing for the public.
- Recommendation:

- Consolidate information onto a single, more comprehensive page.

Inconsistencies:

Missing Online Reports & Links

- Several reports are cited but links to access them are missing:
  - Bicycle and Pedestrian Monitoring (since 2015)
  - Congestion-Travel Time Report (2023)
  - Travel Behavior Reports
- Recommendation:
  - Provide direct access links to all monitoring reports for transparency.

Summary of Major Concerns:

✅ Recreation indicators lack **specific targets and thresholds**.
✅ No data on **how facility improvements impact visitor capacity**.
✅ **Survey data lacks transparency** and is not compared to benchmarks.
✅ **No formal assessment of environmental impacts** on recreation sites.
✅ **Missing links to critical reports** (bicycle, congestion, travel behavior).

5. Scenic Resources Threshold Indicator

Key Issues:

a. Recognition of Fire and Insect/Disease Drivers

- **Positive Step:**
  - This is the **first time** the report acknowledges **fire, insect outbreaks, and disease** as drivers affecting scenic resources.
- **Recommendation:**
  - **Reevaluate all other monitoring indicators** to incorporate these drivers where relevant.
  - Expand analysis on how these factors **alter landscapes and impact scenic quality**.

b. Impact of Wildfire on Scenic Resources

- **Extended Fire Seasons & Increased Severity:**
    - **Larger, more intense fires** are now common, affecting vast areas.
    - Fires contribute to **persistent smoke**, reducing visibility and **dissuading recreational visitors**.
- **Recommendation:**
    - **Explicitly highlight** how wildfire-driven **air quality degradation** (e.g., smoke, haze) impacts scenic views.
    - Track and report **long-term fire-related changes** in scenic quality assessments.

Inconsistencies:

✅ While fire, insects, and disease are now acknowledged, these drivers **are missing from other sections** of the report.

✅ No direct analysis of how **fire-damaged landscapes impact scenic quality** over time.

✅ **Recreational impact of smoke** is mentioned, but no specific data or visitor survey insights are included.

Summary of Major Concerns:

✅ **Fire, smoke, and disease are now recognized, but other sections need updating** to reflect their impact.

✅ **Scenic quality loss due to wildfire damage is not tracked over time**.

✅ **No visitor perception surveys or analysis** of how degraded scenic quality affects tourism.

6. Transportation and Sustainable Communities Threshold Standard

- Reviewed by Jeffrey Marion and Scott Kelley

VMT Per Capita Standard – First Evaluation Cycle

- **Adopted in April 2021**, this is the first time this standard is being evaluated.
- The goal: **Reduce Average Daily VMT Per Capita by 6.8% (from 12.48 in 2018 to 11.63 in 2045).**

Key Issues & Concerns

a. Lack of Detail on How Success Will Be Achieved

- No clear explanation of **which measures will drive VMT reduction** (e.g., transit improvements, bike/pedestrian infrastructure, parking restrictions, electric vehicle incentives).

- **Reviewer Suggestion:**
    - Provide examples from U.S. National Parks (e.g., **Zion, Grand Canyon, Denali**) where **personal vehicles are restricted**, and visitors must use public transit.

b. No Clear Monitoring or Reporting Structure

- Key point states that **an independent technical group** will oversee monitoring and reporting.
- **Who is responsible?** This information is missing.
- **Recommendation:** Clearly **name the technical group** and their **role in evaluation and decision-making**.

c. Scenic Resource Quality & Reports Missing

- The report claims that **scenic quality has remained stable since 1993**, but **no data or citations** are included.
- **Recommendation:** Provide **summary data, accessible reports, and direct links** to monitoring results.

d. Missing Indicator on Development Footprint

- No metric tracking the **conversion of undeveloped land to developed land**, even though it affects:
    - **Scenic quality**
    - **Traffic congestion & VMT**
    - **Environmental impact**
- **Recommendation:** Introduce an **indicator that tracks land development trends** over time.

Built Environment (Community Design) Indicator

Reviewer Suggestion: Include an indicator **tracking total land developed within the Basin** overtime.

Vehicle Miles Traveled (VMT) Calculation Issues

a. Lack of Clarity on Data Sources

- VMT per capita calculation **requires two key values**:
    1. **Total vehicle miles traveled within the TRPA MPO boundary.**
    2. **Population within that boundary (including residents, visitors, seasonal residents, day visitors, and workers).**
- **Reviewer Suggestion:**
    - Clearly **cite the HPMS tables** where these values come from.

- Provide **definitions of "VMT" and "Population"** in the "Definitions" tab.

b. Workforce Housing & VMT Differences (Nevada vs. California)

- **Key Observation:** VMT rebounded on the Nevada side but not in California.
- **Possible Explanation:**
  - **Housing affordability issues** pushed workers **out of Tahoe** into Carson City, Minden/Gardnerville, or Reno.
  - Many of these workers **still commute into the Basin**, increasing VMT on the Nevada side.
- **Recommendation:**
  - Investigate **how workforce housing dynamics affect VMT trends** in Tahoe.

Key Recommendations

✅ **Clarify how success will be achieved** (specific projects, policies, and actions).
✅ **Name the independent technical group responsible for monitoring & reporting.**
✅ **Provide reports & links to scenic resource quality data.**
✅ **Introduce a new indicator tracking development footprint changes.**
✅ **Define VMT & Population explicitly in the report.**
✅ **Investigate workforce housing trends & their impact on VMT (Nevada vs. California trends).**

7. Soil Conservation Threshold Indicator

- Reviewed by Dr Mariana Dobre

The Rationale Details ***section provides a reasonable explanation of how the standard was evaluated and the status determination was made.***

Reviewer states it as reasonable, however, the current methodology for classifying performance relative to target values suffers from inconsistency and ambiguity in the qualitative statements used. Additionally, the absence of clear percentage thresholds for statements such as "better" or "worse" leads to subjective interpretations.

The most important issues reported in this excerpt are:

1. **Inconsistency in Classification Methodology** – The methodology for classifying performance relative to target values lacks consistency, leading to potential misinterpretations.
2. **Ambiguity in Qualitative Statements** – Terms like "better" or "worse" are used without clear definitions or quantitative thresholds, making evaluations subjective.
3. **Lack of Clear Percentage Thresholds** – The absence of specific percentage-based thresholds makes it difficult to determine precise performance levels, reducing the reliability of the assessment.

8. Vegetation Preservation Threshold Indicator

- Reviewed by Robert Shriver

Preserve Stream Environment Zone (SEZ) Function

Threshold Status Determination: The sources don't provide specific details about the analytical methods used to determine the indicator's status, trend, and confidence.

Overall Comments by Peer Reviewer - recommend a smaller subset of indicators that with more closely monitored thresholds.

Invasive species - As the climate becomes warmer and drier new challenges are likely to appear related to invasive species moving in from lower elevations.

Vegetation Preservation - Sensitive Plants and Uncommon Plant Communities - overall observation. Many of the sensitive plant pages lack basic details on monitoring history, protocols, results, or have simply not been monitored Tahoe Yellowcress is the one exception.

Key Issues Identified in the Vegetation Preservation Category:

1. **Lack of Transparency in Analytical Methods** – The sources do not clearly specify how the indicator's status, trend, and confidence are determined, making it difficult to assess the validity of conclusions.
2. **Need for a More Focused Set of Indicators** – The peer reviewer suggests using a smaller subset of indicators that are more closely monitored, which implies that the current monitoring approach may be too broad or inconsistent.
3. **Emerging Threat from Invasive Species** – With climate change leading to warmer and drier conditions, new invasive species from lower elevations are likely to become a growing challenge, requiring initiative-taking management strategies.
4. **Inadequate Monitoring of Sensitive Plants** – Many sensitive plant species and uncommon plant communities lack essential monitoring details, including history, protocols, and results, making it difficult to track their status effectively.

5. **Exception: Tahoe Yellowcress** – Unlike other sensitive plants, Tahoe Yellowcress has been monitored more comprehensively, indicating that a focused approach can yield better data.

9. Water Quality Threshold Indicator

- Reviewed by Dr Joanna Blaszczak

Key Issues and Recommendations for Water Quality Category

1. Nearshore (Littoral) Lake Tahoe: Phytoplankton Primary Productivity

- **Issue: Inconsistent Methodology** – Different methods are used to estimate phytoplankton productivity in nearshore vs. pelagic zones.

  🔹 **Recommendation:** Apply the same methodologies used in the pelagic zone to nearshore locations, especially near and far from stream inlets, to enable direct comparisons.

- **Issue: Lack of Supporting Evidence for Clarity Trends** – The claim that "Summer clarity continues to show a statistically significant decline" lacks a direct source or context.

  🔹 **Recommendation:** Provide a citation to a published report or research study, or display separate trend lines for summer and winter clarity in the data figure for better transparency.

2. Tributaries: Suspended Sediment Concentration

- **Issue: Inconsistency in Monitoring Data** – The report states that there are **7 regularly monitored streams** in one section but refers only to **5 regularly monitored California streams** later.

  🔹 **Recommendation:** Clearly explain why only California streams are highlighted and ensure consistency in the reported numbers.

- **Issue: Unclear Monitoring Frequency and Nitrogen Sampling** – The term **"regularly"** is vague, and it is unclear whether baseflow and stormflow samples are included.

  🔹 **Recommendation:** Define monitoring frequency and specify whether both baseflow and stormflow samples are used, since stormflow events are critical for nitrogen export assessments.

- **Issue: Errors in Data Presentation** – The **y-axis scaling** appears incorrect (in millions), while the axis title lists units in mg/L.

  🔹 **Recommendation:** Correct the y-axis scale and ensure units match the reported values for accurate interpretation.

- **Issue: Data Gaps in Suspended Sediment Monitoring** – The **USGS has monitored suspended sediments since 1969**, but the figure only includes data from 2011 onward.

  🔹 **Recommendation:** Either include the full historical dataset for context or explain why older data is excluded.

3. Tributaries: Phosphorus Concentration

- **Issue: Contradictory Status Determination** – The status is reported as **"At or Somewhat Better Than Target"**, but the rationale states that most tributaries **fail to meet phosphorus standards**.

  🔹 **Recommendation:** Align the status determination with actual data and ensure it accurately reflects current conditions.

- **Issue: Outdated Supporting Data** – The Domagalski paper (data until 2017) is used to support findings, despite more recent data (2020-2023) showing continued exceedance of phosphorus standards.

  🔹 **Recommendation:** Update the assessment using the most recent available data to ensure conclusions are current and relevant.

Overall Recommendations for Improving Water Quality Reporting:

✅ Standardize methodologies across different zones for consistency.

✅ Ensure clarity in data reporting, including defining terms like "regularly monitored."

✅ Correct data presentation issues, including axis scaling and inconsistent figures.

✅ Use the most up-to-date data rather than relying on older studies when newer findings exist.

✅ Provide citations or direct links to research and reports supporting key claims.

10. Wildlife Threshold Standard

- Reviewed by Dr Perry Williams

Only first page of peer review in Feb 26th Governing Board materials (was brought to the attention of Dan Segan and has been corrected as of today)

Respectfully submitted,

Niobe Burden Austere

END OF NIOBE BURDEN AUSTERE PREVIOUS LETTER TO TRPA

Sincerely,

Doug Flaherty, President

Tahoe Sierra Clean Air Coalition (DBA TahoeCleanAir.org)

A Nevada 501(c)(3) Non-Profit Corporation

Registered to do Business in California

Incline Village, NV

TahoeCleanAir.org Organizational Purpose

Tahoe Sierra Clean Air Coalition (DBA TahoeCleanAir.Org) is a Nevada 501 (c) (3) non-profit corporation registered to do business in the State of California. Our organizational purpose extends beyond protecting clean air, and includes, among other purposes, protecting and preserving natural resources, including but not limited to clean air, clean water, including lake and stream clarity, soils, plants and vegetation, wildlife and wildlife habitat including wildlife corridors, fish and fish habitat, birds and bird migration, insects, forest and wilderness from adverse environmental impacts and the threat and potential of adverse environmental impacts, including cumulative adverse impacts, within the Nevada and California Sierra Range, and its foothill communities, with corporation/organization geographical purpose priority being that of the Lake Tahoe Basin. Our purpose further extends to all things incidental to supporting environmental impact assessments and studies, including the gathering of data necessary to analyze the cumulative adverse environmental, health and safety impacts from public and private projects inside and outside the Lake Tahoe Basin, and addressing and supporting safe and effective evacuation during wildfire. Our purpose further extends to supporting transparency in government to ensure that our purpose and all things incidental to our specific and primary purposes are achieved.

Sincerely,

Doug Flaherty, President (BIO NARRATIVE)

Tahoe Sierra Clean Air Coalition (DBA TahoeCleanAir.org)

A Nevada 501(c)(3) Non-Profit Corporation