

September 27, 2022

Governing Board
Tahoe Regional Planning Agency
128 Market Street
Stateline, Nevada 89449

Appellant's Response to Staff Report on Appeal of Staff Approval Letter, File No. LCAP2019-0189-01, Monopine Tower Facility, 1360 Ski Run Boulevard, South Lake Tahoe Appeal Hearing, Governing Board Agenda, September 28, 2022

Members of the TRPA Governing Board and Staff,

Introduction

I come to this Appeal because of issues with TRPA and the Project that are close to my heart, standing up for the people and attributes of this sacred basin against any person who would choose to desecrate it as I feel led to do. I am Alan Miller, PE, a former supervisory Chief at the Lahontan Regional Water Quality Control Board, South Lake Tahoe, retired in 2018 after 25 years of public service. I am particularly stirred to act against the telecoms' toxic industrial waste discharges of PVC plastic containing deadly lead and other toxic elements which the Governing Board approved for this monopine tower in denying the Eisenstecken Appeal for the Project. That was a travesty, and only added to my objections to the many other impacts unaddressed by TRPA on this Project, and the illegal and improper manner in which that whole Project administration and Appeal was carried out by TRPA. That ended with the delayed timing of that Appeal as I pointed out in my Statement of Appeal (p 5-6, and SA Exhibit 2).

In case it was missed, I pointed out there that TRPA illegally delayed the Eisenstecken Appeal by some 60 days. There was no stay request with that Appeal and no legal basis to postpone the Appeal Hearing under the rules for scheduling Appeals, as the Appellants waited and wondered. This bureaucratic inaction delayed the Project while TRPA and Verizon maneuvered secretly to overcome the Appeal, and TRPA and Verizon bear full responsibility for that delay. In the case of this Appeal, there was a stay request and TRPA used that illegally, with no basis under the Rules of Procedure (ROP), to do exactly the opposite, and advance this Appeal Hearing by some 30 days or so, from the October 2022 Board meeting date. This was clearly to serve itself and/or Verizon, to our detriment as Appellants, and is therefore a prejudicial abuse of discretion. In any case, here we are. That brings me to my first point.

The Appeal Hearing on September 28, 2022, Has Been Conducted Illegally

This Appeal Hearing is being conducted in a manner that is both arbitrary and capricious and in a manner not proceeding in accordance with law. This Hearing is being held at this date over Appellant's fully-expressed, continuing, vigorous objection and opposition for violating our civil due process rights as a prejudicial abuse of discretion. Since this violation was not mentioned in the Staff Report, I'll make the point that the comments herein must necessarily include comments in response to at least some of the numerous deficiencies and failures of the Staff Report to address substantial points of law, as my limited time allows, pointing out failures by TRPA to do so in a substantive manner for the record rather than merely stating conclusions

unsupported by law; limits on discretion; or without expressed considerations of the weight of all the record evidence. In light of these comments the Appeal must be upheld.

Comments in Response to the Staff Report

In the first place, there are no surprises here, except perhaps the ways and degrees of misunderstanding and twisting the meanings and concepts in my prior writings, taking statements out of context, and drawing erroneous conclusions from the contents. I will point these out as I go. In case you missed my predictions in the Statement of Appeal (SA) p. 4, they bear repeating here as the comments here on the Staff Report will show: “. . . In all likelihood not all Board members will read through it [SA]. They will simply read the Staff Report and agree with the staff position(s). That is standard operating procedure. The staff will make the assertion that the post-approval soils-hydro examination by TRPA staff justifies the approval, purporting that “ends justify means,” cherry-pick a few items herein to respond to and fill out the Staff Report with, using illogical arguments under erroneous or phony legal advice, and let the rest stand unopposed, with a recommendation to deny the Appeal.” To that we must add also, many issues left out entirely, and conclusions with no arguments or supporting evidence at all. Done. That is exactly what we have with the Staff Report. Analysis following TRPA Staff Report headings follows, leaving out unneeded sections.

Staff Recommendation:

TRPA Doesn’t Correctly Interpret Its Own Regulations. This is a general theme, but let me focus on the recurring TRPA assertions in the Staff Report and Exhibit 2 of the SA about the adequacy of the Revised Geotechnical Report (RGR), e.g., Staff Report at p 261, “The Executive Director’s determination was based on a soils/hydrology report that concluded no groundwater existed on the tower site down to 19 feet bgs at the test boring site.” This determination was based on an unsubstantiated guess, data insufficient. TRPA has repeatedly opined on the adequacy of the RGR to meet the Code purposes and intent, thereby demonstrating that it is failing, at the Executive Director level, to understand and/or implement basic professional standards commonly known to professional hydrologists and soil scientists for what constitutes an adequate report on soils and hydrology with respect to potential ground water influences. In my view this is gross negligence in dereliction of your duty as appointed environmental stewards.

TRPA stands on the adequacy of that geotechnical engineering report, for that is all it has in the record prior to approval of the plan revisions. This is because that geotechnical engineering report was all that TRPA required. We know from Mr. Albritton’s letter that the stated practice for his wireless telecom industry (and with TRPA) is to drill a single geotechnical borehole (8-inch diameter in this case) for foundation design and substrate bearing strength, and seismic purposes. This is disturbing, as the TRPA practice of routinely substituting geotechnical reports for proper and professional reports on soils and hydrology for macrotower projects with respect to potential ground water influences is wholly improper and bound to produce adverse impacts on ground water. It is TRPA’s job to safeguard the ground water by requiring professional soil-hydro reports and it has failed in this, both here and likely for other macrotower Projects, as well, based on Mr. Albritton’s information.

Based on what is demonstrated here by TRPA it is unclear when an actual soil-hydrological report by a qualified professional with the requisite soils and hydrology background would ever be required. Such a program of implementation is not protective of ground water resources and does not meet the intent of the various applicable Code provisions. Under the staff procedures employed here, all non-exempt Permit applicants applying for an exception to ground water influence prohibitions may submit a geotechnical engineering report with a single bore hole, on the order of 8 inches in diameter, and if no ground water is present at the time, staff will approve the exception on the basis of the borehole investigation if it seems to meet one or more criteria in Code section 33.3.6.2.A. If ground water is not present at the time, TRPA will assert no exception to ground water interference provisions is required, ignoring considerations under its Code definitions (Chapter 90) for “Stream Environment Zone,” “Near Surface Groundwater,” and “Groundwater Between 20-40 Inches” and seasonal conditions under which ground water may be encountered.

If ground water is present in the borehole during the investigation, that is approvable under Code section Code 33.3.6.2.B., as long as measures are included in the project to “maintain groundwater flows to avoid adverse impacts to SEZ vegetation and to prevent any groundwater or subsurface water flow from leaving the project area as surface flow.” Such measures may include, but are not limited to, drainage interception and discharge controls (i.e., gravel drains), treatment systems for dewatering wastes from excavation, testing of effluents, identification of containment, treatment and disposal areas, management of fuels for pumps, inspections, monitoring and compliance reporting, etc. In the case of the approval of the revised plans we have none of these things specified and no references to any such Project-specific measures or contingency provisions in the revised plans. **Therefore, because the requirements of Code section 33.3.6.2.B are not met, an exception under Code section 33.3.6.2.A. can’t be legally authorized, and the Appeal must be upheld.**

Since TRPA’s Executive Director didn’t know, or purported not to know, the difference between a geotechnical engineering report for foundation design versus a soil-hydro report for ground water resource assessment, my associate who helped develop and design the criteria for the TRPA regulatory programs decades ago, Ms. Carpenter, Hydrologist/Hydrogeologist, offered me her letter to clarify the matter (SA, Exhibit 3), supplementing and strongly supporting the conclusions I briefed in the Affidavit at pp 10-13. While TRPA opined strongly on the poor RGR as the sole and legitimate basis for approval of the deeper excavation, the *prima facie* evidence it was not legitimate is that TRPA nonetheless followed the recommendations of Ms. Carpenter, somewhat: after the Approval, TRPA sent its staff, qualified from their accreditation in soil science to know the difference in these reports, to the site and performed post-approval investigations, twice (just to be sure, I guess). This was done out of knowing the RGR actually provided no conclusive or definitive information on soils and hydrology with respect to potential ground water influences. Why the RGR was reviewed and approved by staff who didn’t know the difference in a geotechnical report and a soils-hydro report is nowhere addressed by TRPA. Why they would accept this reporting methodology is a mystery and, given all my years of work alongside TRPA, the appearance is that Verizon gets special, favorable treatment from TRPA under the law, as the costs of professional soil-hydro reports are considerable. I’ll come back to this subject later in the Staff Report analysis.

Motion:

On page 261, for the record, my name, “Alan,” is misspelled in the Staff Report, and there is an interpretation of the voting requirements for the subject motion I object to, as procedures are not in accordance with the Compact requirements.

Background:

Also on page 261 we refute the correctness and propriety of all the statements leading to the Staff recommendation to deny the Appeal. That there are cases where exceptions may apply to excavations affecting ground water is not in dispute. This plan revision by Verizon is not one of those cases. Near the bottom of p 261 Staff mentions limited concerns were expressed in the Permit process when the excavation to 7.5 feet or less was proposed. With the foundation at that level my concerns were otherwise focused in the less than one week provided to comment, with major concerns with the many other egregious impacts the TRPA was overlooking for the Project (SA, Exhibit 4). There was less reason to suspect ground water impacts at that excavation level. The RGR’s large borehole was drilled some horizontal distance, tens of feet, from where the actual foundation plan-view center was located, in the parking lot used for staging, and showed something like one foot of fill for the uppermost layer. Therefore the excavation may have only been 6.5 feet into the native soil. All that aside, when the additional excavation was proposed, in effect doubling the penetration into the native soil and again exceeding the 5 foot depth criterion below the approved level, I became very concerned with effects on ground water upon review of the very limited findings in the staff approval letter of August 5, 2022, and Appealed.

This comment by TRPA about the limits to comments on the foundation approved in October 2021 is an attempt to distort the record and mislead the Board: If I’d complained of impacts of the foundation on ground water during the Permit approval process, TRPA would have no-doubt informed me that, as we all now know, the approval for excavation to 7.5 feet was approved in the staff letter of August 27, 2019 (Affidavit, p 2), over two years prior to October 2021. Therefore, the Appeal period had long passed before I was aware of the Project waiver application (or reasonably could be), and the approval was far in advance of the Project Permit application. That’s how TRPA rolls it detractors, and why that fact wasn’t cited in the staff Report here.

Page 262 mainly recounts the Project history from TRPA standpoint, and deserves some comment, including to correct some incorrect and misleading statements, noting the parenthetical statement mid-page was just covered and is recognized as yet another attempt to mislead with this red herring on limited prior comments. Mid-page TRPA also states: “Verizon informed TRPA that the request for the additional depth was made necessary by an engineering requirement to have all the mat foundation at least 5 feet below ground level.” This assertion could hardly be any less vague. That TRPA would even entertain this unsubstantiated legal claim from Verizon is improper, let alone to assert your case for an exception on it. The Staff Report cites to Verizon’s letter (Attachment E, Exhibit A at p 4) where Verizon claims to present “substantial evidence” of a legal requirement. The so-called evidence fails to cite anything other than private-design criteria and specifications for a proposed design Verizon intended to execute. There is no legal requirement for excavation stated whatever in the letter, because there can be no such requirement under the IBC/CBC (Affidavit , p 5). What Verizon informed TRPA of to

constitute an “engineering requirement” fails to meet the legal tests I laid out concerning the International-California Building Code, and fails to address my comments in any way concerning actual legal requirements for engineering structures (Affidavit p 5-7). Because the engineering requirement for additional excavation is not evidentially a requirement of law, the Appeal must be upheld.

At the bottom of p 262 the Staff Report mischaracterizes the additional soil reports as “in response to Miller’s appeal and request for additional information.” That quote is incorrect in two regards. First, the soil reports were NOT responsive to my request, which was in connection to the stay Affidavit portion of the Appeal, requesting soil reports before excavation was authorized. Since that stay request was not honored and excavation proceeded, there was no stay so far as I was concerned, and the investigations were not in response to my request, but rather for TRPA to attempt to cover its malfeasance by approving of the excavation in advance of such information. The second clarification is that my request was for additional information from an *independent* expert investigator, specifically not TRPA staff, as in addition to conflicts of interest, I have ample cause to consider Staff competence is lacking, as discussed extensively in this Appeal. I vote “No Confidence.”

I have already made lengthy statements in the SA (p5, and Exhibit 2) concerning our strong, continuing objection to including supplemental soil-hydro reports prepared by TRPA in the record of this Appeal. TRPA staff noted this in a footnote 2 on p 264, and nonetheless included the reports over our strenuous ongoing objections as prejudicial and conflicted. It is for that reason I make no comment on the contents of the reports. The TRPA reporter is not free of the influence of its employer.

Issues on Appeal

1. Scope of Appeal Limits Issues Relevant to the Plan Revision

At the bottom of p 263 the Staff Report suggests the scope of review issues “on this appeal are limited to those unique to the plan revision” which I agree with, though I disagree with TRPA on what the implications of the quote are. I have presented substantial evidence that an Initial Environmental Checklist (IEC) was not provided by Verizon as required for a complete application for the plan revision, a subject I will touch on further below. Because no IEC was completed, issues on Appeal can only be limited to those in the TRPA’s IEC form, which had to be completed and signed anew by Verizon for the plan revision, and was not. (See Affidavit at p2, SA at pp 12-14.)

2. Process of Plan Revision Met TRPA Requirements

The first paragraph on page 264 discusses that noticing is not required for plan revision and I don’t here contest the analysis presented. It is rather a moot point in this case, however, as the appealable exception associated with the plan revisions was discovered without the benefit of public notice. I will add that my comments at p 22 of the SA remain unaddressed concerning TRPA’s abandonment of ROP 2.14 requirements to “maintain a list of all persons who have requested notice of TRPA meetings.” The paragraph concludes with, “These rules, as set forth above, support the Executive Director’s determinations to review the application at staff level

without re-noticing.” That may or may not be true, depending on the outcome of the IEC review. Since the IEC was not submitted and reviewed there can be no way to fully ascertain whether re-noticing would be required. The Staff analysis precludes incorrectly that re-noticing could be an outcome following the IEC review, as discussed at SA p 13, and discussed in further comments on the IEC, below.

The Staff Report then jumps from discussion of the noticing matters to discussing the Fee Schedule, which I raised substantive issues concerning in the SA at pp 8-9. It concludes that noticing is not required, without further addressing within the Staff Report any of the substantive issues I raised about the Fee Schedule regulation.

The Staff Report discusses the IEC requirement very unconvincingly at p 264, “TRPA staff found no interception or interference with ground water from the 6-foot increase in excavation depth and therefore no significant adverse environmental impacts from the plan revision are anticipated to occur and no supplemental IEC was required.¹” And the footnote 1 is: “Miller claims that staff violated Compact Article VII because no “Finding of Significant Effect” or FONSE was made for the plan revision. See Attachment D, Statement of Appeal, at 13. No such violation occurred because no supplemental IEC was required. TRPA therefore did not need to make another FONSE and could rely upon the FONSE made for the original cell tower approval.”

I argued in the Affidavit, p 2, that the IEC for the original cell tower approval was inadequate in a number of respects and can’t serve the plan revisions, and the Staff Report does not address these comments substantively. The Staff Report incorrectly states: “Miller also argues that TRPA should have prepared a second [IEC] to review the added depth of excavation.” No, the IEC preparation requirement is applicable to Verizon not TRPA. I argued rigorously in the SA (p 12-13) that an IEC was required for a complete application and all the Staff Reports provides is a conclusion without a basis, “no IEC was required.” No, the IEC requirement was ignored for Verizon. That is an injustice to the entire Permitting community, favored treatment.

The Staff Report then goes on to confuse the facts even more concerning the FONZE by citing Rules of Procedure 6.15.1 (Grounds for Supplemental EISs). As noted, this rule concerns supplemental Environmental Impacts Statements (EIS), so has absolutely no relevance to the FONZE, which was promoted in lieu of an EIS. TRPA can’t apply the rules for an EIS, which it did not prepare and which are not the same, to a FONZE. There is no EIS to be supplemented. Therefore this is nonsense, when a complete application clearly requires an IEC as I cited. The approval was improper in a classic cart-before-the-horse way: the TRPA Executive Director asserts there were no adverse effects on ground water, essentially based on no credible evidence (a very lame geotechnical report, and no IEC, supplemental or otherwise), and then just made the specious findings for the exception that are at issue here, improper for the many reasons discussed in the Affidavit and SA. There is no applicable FONZE for the Project, no legal basis for “supplemental” FONZEs, and no basis for approval of the Project as revised.

3. Groundwater

A. Reasonableness of finding no interception of groundwater

The bottom of p 264 begins a discussion on the “Reasonableness of finding no interception of groundwater,” interesting because the only reason given is based on the inadequate geotechnical report, and concluding that going from 7.5 to 13.5 feet of excavation makes no difference. The Staff Report states in the boring sample there was “neither ground water nor evidence of it” present, but the data were inconclusive to make that claim. So after any potentially significant impacts to ground water were allowed, TRPA brought its staff out to investigate against our protests and can’t now use that to justify violating the law to proceed as it did in the absence of conclusive information. At p 265 the Staff Report, continues: “Miller, however, does not contest the actual findings from the onsite boring . . . that find no evidence of ground water presence at the time or in the past, only that they are not enough definitive enough for Miller.³” That is a blatant mischaracterization, based on prejudicial post-approval investigations. And the footnote 3, in relevant part, is mischaracterizing what I wrote in the Affidavit at p 10 with regard to the geotechnical report: “a report Miller describes as a soils/hydrologic report by a qualified professional as described in the Code” – but this was not an assertion of its adequacy, as discussed at length herein, only that it apparently met TRPA’s Code *under TRPA interpretations*. I then immediately went on to begin describing some of the many professional deficiencies of the report, and added more later in the SA at pp 9-10. Despite that, and having only that scant information to go on, there was enough information and disclaimers in the RGR concerning potential for presence of ground water, in addition to my other professional knowledge, to warrant a professional investigation by a properly qualified soil scientist-hydrologist prior to concluding no adverse effects on ground water would occur.

The Staff report at p 265 suggests I’m not aware of the difference between ground water and subsurface runoff (i.e., flow through soils). No, I am not confused about that and I don’t need the refresher provided, so I assume that’s for the Board members and public. The TRPA definition of the ground water table (in terms of soil), is understandable. But one has to wonder what science the conclusions on ground water by TRPA are based on in light of what we’ve seen here, desperately clinging to a geotechnical engineering report for *lack of evidence* of the seasonal presence of a subsurface water table, to support Verizon and the Staff. Data insufficient. The Staff Report then goes on to criticize my pre-Project excavation concerns and discuss conditions evident since the foundation pit was excavated by Verizon, information that was not available to me or the Executive Director when the Appeal was filed. TRPA relies on luck to assure no impacts to ground water under its evident regulatory program approach, and that is highly improper.

The section concludes with a footnote concerning coverage evaluations for the revised plans in which I showed, with calculations and measurements, that the final revised plans as approved would result in coverage greater than allowed. The footnote states the response: “TRPA examined Miller’s contention regarding coverage and could find no inconsistency with the 2021 approved plans. See Attachment I.” While citing to my SA at p 19-20 and its Exhibit 6, the Staff report mischaracterizes my concerns with coverage entirely in stating staff found no inconsistency with the 2021 plans. As I stated “**Because the approved Project plans do not meet coverage limits for the Project as designed and approved, the coverage findings in the**

Permit record of approval are invalidated and the Appeal must be upheld.” I did not review the 2021 plans for consistency with coverage. The complete details that were provided with the revised plan set were not available for evaluation until the 2022 plans with revisions were finalized and approved; why would I want to review a plan set (in 2021) that was not verified with a Final Stamp from TRPA staff?

I see comments in Attachment I that are from TRPA Staff: “I am not sure where the 24.5 feet and 32 feet come from?” Really? Very clearly from my write-up the numbers were derived from my careful measurements of the scaled drawings. I excluded roof overhangs. On p 2 of Exhibit I an added comment block reads as the “underground footing does not count as land coverage.” That is in direct contradiction to the approved coverage shown on page 1 of the Exhibit I for the proposed cell tower footage, which is allocated 304 square feet. Both can’t be right, and in fact the footing is considered coverage. I did not overestimate the coverage by 304 feet, nothing like that. Therefore staff’s comment that the foundation coverage is not included is incorrect, highly contradictory, as well as inconsistent with the definition of “coverage” in the Code of Ordinances Chapter 90 definition for Land Coverage, “A man-made structure . . . that prevents normal precipitation from directly reaching the surface of the land underlying the structure.” The foundation is coverage. The TRPA analysis utterly fails to demonstrate in any tangible way, as I did, that the coverage is in accord with requirements. They may be off by as much as 29% over allowed coverage. The Staff work/calculations must be shown. **The 2022 plans provided by Verizon, as approved by TRPA, do not meet coverage allowances and there is no substantive evidence in the record to dispute that, simply a contrary assertion and erroneous documentation, therefore the Appeal must be upheld.**

B. Staff Reasonably Granted Exceptions.

The Staff report at p 266 states: “If the Governing Board concludes that the Executive Director correctly determined ground water will not be intercepted, it need not consider whether staff also had a sufficient basis to issue the exceptions as the waiver would not be necessary.” So we see here why the TRPA must cling so desperately to the adequacy of the RGR; despite all the thousands of soils-hydro applications by real hydrologists and soil scientists TRPA has required of other permit applicants, Verizon gets a free pass. Interesting that TRPA is willing to sell out its whole ground water protection program, its image as professionals with regard to ground water science, and endanger our Lake and community with toxic plastics, RFR radiation, fire dangers and a tower that may collapse in order to serve Verizon. You must be so proud. If you want to further stain and destroy your public image, as it appears, you will deny the Appeal.

Concerning Code section 33.3.6.A.2., the Staff Report states: “Staff does not apply this provision as strictly as desired by Miller.” Since my strict desire is to conform to the law, this is nothing short of a frank admission by TRPA that it is not following the law, not proceeding in a manner in accordance with law, and therefore acting illegally with regard to: “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. . . .” TRPA has not cited any laws or code that are applicable, and instead refers again to the letter from Verizon and its hearsay about its private design ideas, as debunked earlier in this letter. No, TRPA is following

nothing here but its seemingly infinite discretion, which does not include ignoring or interpreting the law to mean other than what it says. The section concludes by writing: “Nor does Miller provide evidence that there exists a structural engineering foundation that would result in less excavation,” as if I should design an alternative foundation for the tower, which I find ludicrous. Tower designs are only limited by time, money and imagination and I have no interest, nor is there any basis for TRPA to shift the burden of evidence to me. This is just more of the same “arguing from ignorance” your counselor illogically trots out for instant Board consumption, as I discussed at length in the SA at p 10-11. Why should TRPA change a winning strategy, no matter how illogical? There is always administrative weight to fall back on, versus evidence. I disagree with the conclusion that the exception was reasonably granted, for that is not what the law requires. TRPA plays fast and loose with regard to the applicable regulations for the benefit of Verizon, violating requirements as it goes. You must uphold the Appeal.

Code section 33.3.6.A.2.d allows for an exception when “necessary for the public safety and health.” TRPA claims, “Additional cell facilities in the Tahoe Basin are supported by local fire and police officials as a necessary improvement for emergency operations.” (Attachment J). The Staff Report suggests the SA “does not undermine the conclusion that operation of the tower could increase public safety as set forth by the fire and police officials’ statements.” Those conclusions are undermined, including as follows: unsubstantiated by design standards applied (SA at p 16); debunked as orthodoxy with respect to local police and fire officials (SA at p 17); and TRPA Staff’s apparent misunderstanding of the text at SA p 19, which clearly shows the fire and police officials have absolutely no basis to expect that this tower will provide “necessary improvement for emergency operations” during an actual emergency. That’s not the intent of the tower’s chosen Class II design. The approval here, like all those before on this Project, completely fails to articulate its consideration of any contrary evidence concerning potential effects on health and safety, which must include fire risks and collapse risks, the weight of the evidence, and the rational basis for its conclusions in light of all the evidence in the record. That is arbitrary and not proceeding in accordance with law. **Further, the Staff Report was completely non-responsive on the issue of tower snow and ice loading, and collapse risks. As far as I’m concerned, WITHOUT THAT ASSURANCE TO THE PUBLIC THAT THIS TOWER IS PROPERLY DESIGNED, THIS IS A DANGEROUSLY UNDERDESIGNED TOWER AND A DETRIMENT TO PUBLIC SAFETY, as is the TRPA, in so very many ways.**

Suggested Path Forward

Do not uphold the RGR as adequate. Uphold the Appeal and your agency’s integrity by requiring a new, complete application from Verizon, including a new IEC, and proceed with Permit processing under all applicable rules and requirements, with opportunity for public input. See Affidavit at p 17. Verizon may proceed under the March 2022 TRPA Board approval, so long as excavation does not exceed 7.5 feet and all coverage is deemed in compliance with allowable coverage requirements. Verizon can fill in the pit it excavated and build the foundation on that if desired, or await Permit approval. Verizon can also withdraw its application.

Conclusion

Due to the great number of violations of law, illegitimate findings, reliance on a geotechnical report for soils and hydrology, proposed coverage over allowed coverage, and other substantial matters of law and administration as discussed herein, in my Affidavit and in the SA, I urge you to uphold the Appeal. As I have stated elsewhere, all points of law and issues of administration I've raised in this Appeal and which are not substantively addressed in the Staff report are deemed uncontested and conceded. Please uphold the Appeal. On behalf of the Appellants, thank you for considering these comments.

Sincerely, Alan Miller, PE