

STATEMENT OF APPEAL - TRPA Approval of Verizon Wireless Revised Project Plans

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Preface

My co-appellant David Benedict is diagnosed with blood cancer and literally fighting for his life against a small-cell tower near his house and the compassionless Verizon employees behind it, as aided and abetted by TRPA and City of South Lake Tahoe (City) employees, who deny any reasonable accommodation. My soul-sister Monica Eisenstecken (not a party in this Appeal) sold her beautiful home in desperate fear from Verizon and its microwave facilities, fleeing for her safety and that of her family. I have my own personal reasons for opposing the dangerous microwave technologies in our communities and Earth environment. Nothing in this Statement of Appeal is intended to be hyperbolic or histrionic.

I have direct experience with some of you. Chair Gustafson worked through many Permits with me when she was on staff at the Tahoe City Public Utility District decades ago, Board member Friedrich worships at the same Unity spiritual center where I belong, I've sat across the table in meetings with Joanne Marchetta and John Marshall at various times in the past. I'm sure you, and the staff alike, all like to think of yourselves as good people, and we've generally had cordial relations. You may think of yourself however you like. Only your actions matter to us.

This Statement of Appeal hereby incorporates in its totality my Affidavit filed in this matter (Exhibit 1) and should be read together with that in its entirety.

Introduction

I am grateful, for I now believe this Appeal was a predestined opportunity for a reckoning. Grateful to have this opportunity to again explore, explain, and wonder at the requirements and practices of the Tahoe Regional Planning Agency in the context of this Project and Appeal. Thank you for reaching out to me as you did. These are my thoughts and opinions, presented as protected free speech under the United States Constitution. You may recall me from the Eisenstecken Appeal hearing last March and wonder, "Who is this guy representing the co-Appellants and what is his problem? We know he worked for the California Regional Water Quality Control Board, Lahontan Region, with their office at Lake Tahoe." I'm happy to explain a little with a bio-sketch. I paid my money and so get my say throughout, though I aim to be relevant to this Appeal, in the context of larger concerns with wireless microwave technologies. I'm Alan Miller, professional civil and environmental engineer, registered in California since 1997. You can call me a self-described "good-government advocate" like Mr. Jinkens, former City Manager, and now candidate for City Council, who also spoke before you to no avail at the Eisenstecken Appeal in March 2022.

I was born near the end of the post-war Baby Boom and an inquisitive child. My father sold World Book Encyclopedias and Dictionaries at the time and I'd read most of these by around the age of six. During a short period in my elementary school days, I was repeatedly accosted by a neighbor-bully, a larger kid my age. I not very big, but my father, "Big Don," was an All-State Guard and Tackle for the Iowa State U football team and taught me how to defend myself, after which I found that bully wasn't so tough. Despite the terror I'd felt, I became something of a bully myself for a time, until my smarts kicked in and I realized I didn't like bullies and didn't want to be the bully I'd behaved as. Life lessons, you know. Dad went on to be a great healer.

I became captivated by the music and environmental and anti-war counter-cultural movements of the '70s. I know some Board members may recall the time when all the news was coming out about the CIA control of the media and the drug scene, the many heinous government psychological operations or "psy-ops," the Vietnam war, Watergate, ERA, the draft was on, the corporate-military-industrial complex was burgeoning, etc., etc., and the state of the environment was getting so bad that *something* had to be done. Eventually I found myself studying environmental pollution control engineering at Humboldt State with an emphasis in water quality and solid waste management; physics, chemistry, electronics, environmental systems, biology, water and wastewater treatment, environmental monitoring, water pollution control, etc., and a ton of higher math and computer programming.

Somewhat to my own surprise, I chose a career path as a regulator, working in government for "the man," as we said in my youth (since most of the controllers, visible and invisible, were men at the time). But all these things informed my view as a regulator, including a healthy skepticism of government, and federal government in particular. I worked in government, so I know there are a great many honest, upright "little" people. But the governments of the world have been caught spying on everyone through the tech giants and telecommunications systems and flagrantly lying literally millions of times over the most egregious matters of life and death. TRPA, in this matter, has been a microcosm of that, without the spy capability it is assisting to erect. I'm over believing that the fascists and traitors in our governments are an altruistic benefactor to be trusted at face value. You may think me impertinent or impolitic to call out treasonous government actors for their lies and misdeeds. Be that as it may, no one need take offense that is faithfully upholding their sworn duties. However, this is now my third appearance before the TRPA Governing Board on this Verizon Project and I've seen all I've seen.

Anyone with one eye half open has seen plenty of the above, and my eyes are wide open. I hold that a greater reckoning is coming, in which the guilty at all levels will be held to account for their actions, just like under the record here. To be clear what "fascism" means, I take the definition from the World Book Dictionary (1983): "*n* 1. Any system of government in which property is privately owned, but all industry and labor are regulated by a strong national government, while all opposition is rigorously suppressed: *A basic idea of fascism was[is]: Everyone shall work, but no one shall work against the state . . .*" (emphasis added) thus, a slave system by another name which those of my kind have no interest in. Fascism is another name for

the so-called “public-private partnerships” TRPA is so fond of, deigning to squash any opposition under bureaucratic weight and scientific “groupthink” orthodoxies. Choose up whether to aid in restoring the rule of law to our Constitutional republic or to continue the illegal abuses under color of law, being the worst sort of lawbreaker. I’m all about Restoration at Lake Tahoe, restoring the rule of law and reason, thinking globally, acting locally to help save our lake quality and quality of life.

The State agency I worked 25 years for functions similar to TRPA, with planning, regulatory, permitting and enforcement powers from the enabling statute. However, California’s Porter-Cologne Water Quality Control Act (1969) promulgated broad administrative enforcement powers to the State Water Resources Control Board, and nine Regional Boards (such as I served), that make TRPA enforcement powers puny by comparison. Huge potential liabilities (fines) can be levied administratively, investigation and clean up orders, cease and desist orders, abatement orders for nuisance, Attorney General actions, and more. In the case of the Regional Board actions, appeal goes up to State Board, then to the State Superior court. State Board has a division of attorneys, and many of the enforcement provisions in the California Water Code are backed by referral to the California Attorney General and its armada of attorneys if things get heavy. I’ve been involved in all that sort of thing.

I mention these administrative powers (which TRPA and its Compact has essentially none of, save cease and desist orders) because the agency I worked for could be a real tyrant and “discretion” abuser if those unelected appointees at the Boards in charge weren’t checked. Checked by the law itself, its own scientific, legal, engineering culture and administrative procedures, and oversight by the Governor’s CalEPA, the Attorney General, USEPA, the public, interest groups, watchdog groups, advocacy groups, and the like, against a regulatory system stacked heavily, though arguably, in favor of “waste dischargers” – the industrialists, the technologists, the military, the great cities, developers and others. It could be a bully if that was how it wanted to operate. While the CA Attorney General is empowered to prosecute corrupt public officials, again, restraint is mainly through law, policy and recourse to the courts by aggrieved parties.

In the course of my own work I considered myself a servant of the public, as well as serving justly and fairly the permit patrons, and I’m very familiar with interest balancing as practiced by boards. I never considered it my job to do or promote anything illegal. I can’t recall many actions I represented, other than civil liabilities, where permit matters were appealed or litigated. I was once called on to testify against the Los Angeles Dept. of Water and Power in Inyo County Superior Court concerning our regulation of the Lower Owens River Restoration Project, the nation’s largest; they lost really badly (faced permanent enjoinder of use of the Los Angeles Aqueduct).

I don’t think there really is a TRPA, or a Water Board, a court, or any other institution, there are only the people who comprise it at the time, and how they interpret and apply the law in any

given instance. For millennia, human beings had no real awareness that others had thoughts and feelings just as they did. Only outward actions could be evaluated. That remains true, for we don't really know what thoughts and feelings are motivating people, but with the invention called "writing" people can express and explain for the record the otherwise-hidden motivations, desires, thoughts and perceptions of facts behind their outward actions. The courts, in particular, like to see logical conclusions supported by substantial evidence and well-reasoned arguments from the agency people, as your Compact requires.

The agencies don't like this because it's time consuming and can be difficult. Therefore, unless perhaps there is some significant opposition most actions involve little analysis or fact finding, corners are cut in the rush to "get the permit out," as was often said. I understand all that, the desire to avoid extensive analyses, ignore rules and timelines where uncontested; minimize time spent writing findings and explaining evidentiary support; minimize public involvement and operate as "efficiently" as possible to serve the Permit clientele and itself. Over time, findings become rote and "boilerplate" – simply putting a new name on an old finding. Practice becomes orthodoxy and orthodoxy becomes practice, with it taken on faith that the complex laws are being followed, that impacts are being managed, that science and interdisciplinary analysis is being diligently and correctly applied, as it hasn't been with the ongoing, unmitigated, wireless rollout (at Tahoe and elsewhere). Government is not designed to be efficient, necessarily, but rather to be considerate of all concerned, methodical, balanced, predictable, representative.

Actions and conclusions nonetheless can be distinguished by those supported in writing or testimony and those which are merely based on unsubstantiated notions, faulty "facts," unsupported and illogical conclusions, or which are arbitrary or capricious, changing without reason, even when the courts may give a certain weight or deference when it comes to government agency actions (a practice becoming more and more questionable). Likewise, acts that do not proceed in the manner required by law need to be addressed or matters may end up in court (as in the Eisenstecken case), hardly an efficient use of the agency's time, public money, and energy – defending its arbitrary, illegal actions in court. While much of this should be well-known to all concerned, I wouldn't raise it if I didn't think there was an issue about it at the TRPA that lies at the very heart of the Appeal. Enough preamble; let's get started.

Experience with TRPA

With history as my guide, I don't expect my writings here will hold much sway with the TRPA Board or result in upholding the Appeal, so this might be written for a different audience. In all likelihood not all Board members will read through it. 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. Triple down, never admit an

error, especially with these detractors, especially on this Project. My view of unopposed comments with no explanation is that they stand as uncontested fact, just like when TRPA puts out a document with opportunity for public comment. If nobody comments, whatever is in the document stands as factual. I predict the comments herein, even those raising substantive legal issues, will mostly be bypassed silently, again with history as my guide.

Therefore I'm not going to waste my time providing copious literature, footnotes, references, weblinks, legal citations and the like to fully bolster all my legal and other assertions herein, especially under the pushed September hearing circumstances. Rather, I will in some instances do a "gloss" of the facts, much in the fashion TRPA prepares its permitting and approval documents. In other cases we'll drill deep down into the regulations. Either way, the difference is that I can back up my assertions here, in ways you may find astonishing, and therefore reserve the backing-up task for another day. It will be enough for now if staff read this and its Exhibits. I hope you get to the end. As I wrote to your counsel, I did what I could to get your staff the information herein in time to provide sufficient time for a reasoned response based on substantial information in the record of this proceeding. You only give the public 7 days to respond to your agenda; I've given 16 days as of September 12.

TRPA's Soil-Hydro Report is Barred from the Record of this Appeal

What I have to say about the post-approval soils-hydro examination by TRPA is that it is barred from the record of the Project approval, and the Appeal, coming after the facts. Any use or mention of its contents during the proceedings for this Appeal is over our strenuous legal objection, for it played no role in the Project approval being appealed. TRPA must rely solely on the information in the record on and prior to August 5, 2022, and respond to the Appeal solely on the basis of the soils-hydro report it accepted, and other information in the pre-August 5, 2022, record of the Project. Had TRPA accepted the suggestions we provided after filing the Appeal, to require or facilitate production of an additional, independent, proper soils-hydro report by Verizon, perhaps we would have allowed inclusion of that in the record as non-prejudicial. As such, we disallow the contents and findings of the TRPA soils-hydro report for the site in its entirety: Its use would be improper and prejudicial to the Appeal and presents, at a minimum, the appearance of a conflict of interest for the participating staff pursuant to TRPA's Rules of Procedure (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." Nonetheless, I expect your counsel will put forward faulty advice that no such appearance of a conflict exists, and present the TRPA soils-hydro report over our strenuous objection.

This expectation resides in part from a consistent pattern of practice by TRPA: to hold others to all its byzantine rules and requirements when it wishes, while excusing itself from compliance with same when it arbitrarily deems fit. We have just such an example of that with the email exchanges in Exhibit 2, which followed on the Appeal and stay request filing. In my email of

August 28, 2022 I made it very clear that any Appeal Hearing forced on us on September 28, 2022, is illegal and in violation of our civil due process rights as Appellants. Therefore, this Statement of Appeal is filed in vigorous continuing opposition to TRPA's repeated and baseless assertion that it has discretion under the ROP to advance the Appeal hearing from October 19, 2022 to September 28, 2022, illegally depriving us of time to prepare for the Appeal Hearing. TRPA does not have that authority, only bureaucratic weight. As I pointed out in my emails, TRPA and Verizon alone are responsible for the timing of this Appeal, based on illegally postponing the Eisenstecken Appeal hearing by some two months. It seems TRPA is incapable of learning from its mistakes, in so many ways, with your long-standing bureaucratic counselor at the helm acting at the Board's direction, providing false cover to back up the Board's desire for a September Appeal hearing based on groundless legal assertions.

My Project Review Background

I have no need to repeat all the record information in my Affidavit, which I stand by. There will be references to the Affidavit and additional information to augment the preliminary statements. I will go through the Affidavit, mapping the regulatory territory I staked out, making additional findings and salient points in the manner I learned and practiced in my professional career. I was often working directly or indirectly with TRPA on the very same Projects as independent Project co-planner and co-regulator, spanning the full range of large development and restoration projects, and many of the smaller ones as well. As such, I sat in the "cat-bird's seat" with respect to TRPA, seeing most if not all of its planning, regulatory, and environmental documents come across my desk for review or information, as well as many local, state and federal environmental documents from the much larger Lahontan Region.

As a State agency, we were charged to comply with the California Environmental Quality Act (Public Resources Code 21000, et seq.) and, unless a document had to be jointly prepared with TRPA, or was going to cause a foreseeable issue for my work concerning water quality, I often left TRPA environmental documents I deemed sorely deficient to TRPA for TRPA purposes, as directed by my up-line management. It was a different approach that TRPA applied than I in the path to their various regulatory, environmental and permit certifications, what I would term a gloss-over of the facts, reasoning, and findings, with little substantial analysis, no different than I've seen on this Project, and that's the point. I know the system, and see through the deficiencies and lies like thinnest glass. Ancient history, yes. Yet it's still true as we see with the Appeals. Reform is needed and, if desired, a golden opportunity for reform presents itself with your pending appointment of a new Executive Director.

Regulatory Malfeasance

I wrote on page 1 of the Affidavit that this Appeal is concerned with TRPA misinterpreting and misapplying the laws and regulations they are charged to carry out justly and equally for all. Especially as concerns its own compliance with the law. Your counsel replied to the Affidavit's

stay request that our Appeal was unlikely to prevail on the “merits,” which must imply that the law and regulations TRPA is charged to follow have no merit, for that is what our Appeal rests on entirely. We disagree. Following the law is paramount.

The judicial standard for review of TRPA actions is stated the Compact section VI.(j)(5):

(5) In any legal action filed pursuant to this subdivision which challenges an adjudicatory act or decision of the agency to approve or disapprove a project, the scope of judicial inquiry shall extend only to whether there was prejudicial abuse of discretion. 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. In making such a determination the court shall not exercise its independent judgment on evidence but shall only determine whether the act or decision was supported by substantial evidence in light of the whole record. In any legal action filed pursuant to this subdivision which challenges a legislative act or decision of the agency (such as the adoption of the regional plan and the enactment of implementing ordinances), 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.

This Appeal is solely about the last two lines above, “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.” In Compact Article X.(a) we read, “(a) It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof.” TRPA can’t construe “reasonably and liberally construed” to mean “to break the law.” Quite the opposite is true. As a creature of law and empowered with quasi-adjudicatory functions, it must be predominantly and only concerned with carrying out its legal functions in a legal manner. The TRPA, as empowered under the Compact primarily, and secondarily enacting its own regulatory laws, ought to be more concerned with the equal application of those laws.

The Board has acted as though it has complete discretion to ignore the various provisions of law in its own misperceived balancing of interests, which discretion is nowhere granted in the Compact or any other place with regard to a very simple permitting matter such as this, as this Appeal will show. I argue there is no discretion to violate the laws, and if you do so, you’d best be prepared for litigation or reprisal. I know the staff thinks this Appeal is all about the Project; I assure you it is not. This is about TRPA’s insistent, repeated and flagrant violations of the Compact and Rules as applied to itself. This dangerous, ill-conceived Project is a concern, for sure, and merely serves as one example, a real shiner. Your vote on the Appeal is a free-will test in your soul’s evolution and I wish you tremendous advancement.

Of course, this Appeal resides in the context of the whole, egregious record of this Verizon Project on Ski Run Blvd., as being litigated by Eisenstecken, et. al, in federal District Court, and that informs the views and provides a record of behavior with regard to the law we’ll see repeated here. When I joined the Water Board I was required to swear an oath to faithfully uphold and defend the laws of the state, and the U.S Constitution also, if memory serves.

Nonetheless I swear it now. I was a civil servant. I expect TRPA Board members must also swear an oath to uphold the laws and the U.S. Constitution, and I would like confirmation by printing any such oath in the Staff Report for this Appeal. The way I see it, if you are upholding your sworn duty, you may consider yourself Honorable; to do otherwise is treasonous.

The Major Modification, and Permit Condition 3.F. (hydro-soils report)

This revised Project Appeal is a whole separate matter than the approved Verizon Project and must rest on its own record predating August 6, 2022. Without ascribing any motives, let's look at what happened following the Board's Final Permit approval and appeal denial on March 23, 2022. Thereafter, in the process of finalizing plan details with TRPA (something I'll have more to say about later), Verizon determined to propose a deeper foundation design. No problem about that. TRPA rightly accepted the proposed change as a "New Project" (see Affidavit pp. 3 and 4) and approved the revised design on August 5, 2022, posting it to the TRPA website with the notice to appeal, apparently considering the approval a trivial matter within the scope of its authority and discretion.

I contend that approval of the "New Project" is where TRPA erred. This is what your website (<https://www.trpa.gov/permitting-process/>) says about plan changes: "Plan Revisions. You may revise your original approval by requesting a plan revision. An approved plan revision, however, will be tied to the original permit expiration date and the **conditions of the original approval**. A minor plan revision generally involves small changes that do not include modifications to land coverage or the exterior dimensions of a structure. A major plan revision generally includes changes to land coverage or height calculations. Check the TRPA Filing Fee Schedule for the appropriate fee amount." (**emphasis added**)

To the extent the above is "guidance" to your interested readers, fine, but it does not indicate why the "major" and "minor" distinctions matter, which is disclosed in the adopted Fee Schedule referenced. Checking that, we see the following under "Plan Revisions": "Minor – A non-substantive change to a permitted project. **A project that will not cause changes to any TRPA permit conditions**, does not require new field review by TRPA staff, does not require a public hearing, and **does not involve any modifications to building size, shape, land coverage, location, or scenic rating score**. Major – A substantial change that **does not significantly exceed the original scope of the project. Revisions that significantly exceed the original scope of a project, or which require a public hearing, shall be treated as new or modified projects, as the case may be.**" (**emphasis added**) The proposed Project plan changes definitely did "cause changes to any TRPA permit conditions," specifically, Permit Condition 3.F. The staff approval letter of August 5, 2022, in effect, changed the maximum excavation depth in Condition 3.F. from 7.5 feet to 13.5 feet, no question about it. Further, the "scope" of the project expanded with modifications to the building size (doubled) and location (deeper), as discussed on p. 3 of the Affidavit.

The change to the Project can only rightly and consistently be called a "Major" modification pursuant to the Fee Schedule regulation since the Condition 3.F. was changed and its new "scope" ran contrary to Code of Ordinances (Code) section limitations in section 33.3.6.B.,

concerning excavations 5 feet or more deep (noting that excavation had been approved to 7.5 feet by TRPA under the single borehole geotechnical methodology). Nonetheless, TRPA simply jettisoned the rules for “new or modified projects, as the case may be” despite the change to Permit Condition 3.F. (The 2.5 feet of exceedance was approved in 2019 in precisely the same manner and is just as improper as the 2022 approval, for the reasons set out for this Appeal below, occurring outside the rules TRPA is bound by under law.)

As I explained in my email reply to your counsel in Exhibit 2, the Final Permit contains a specific Condition 3.F. which requires a “new soils-hydro application” for proposed excavations deeper than 7.5 feet. Since the proposed revision didn’t meet the conditions of the original approval such a report was required. But what kind of report? A geotechnical report? With its design change Verizon provided an updated, not “new,” geotechnical report (the revised Geotechnical Report, RGR) to cover the condition of approval. And TRPA accepted it, in error.

As the Code says, excavation “where there exists a reasonable possibility of interference or interception of a water table shall be prohibited unless TRPA finds that: 1. A soils/hydrologic report prepared by a qualified professional, which proposed content and methodology has been reviewed and approved in advance by TRPA, demonstrates that no interference or interception of ground water will occur as a result of the excavation;” I discussed some of the limitations of the RGR report in my Affidavit, noting nothing had been changed concerning the subsurface hydrologic evaluation from the same report submitted in 2019, and questioning whether TRPA had reviewed and approved in 2022 the report’s “proposed content and methodology” in advance, as it did in 2019.

The original 2019 GR drill log indicated “slightly moist” soil in the entire 18-foot soil column below the topsoil in late July 2019. As I discussed, a single geotechnical borehole is insufficient to evaluate hydrologic indicators to preclude the “reasonable possibility of interference or interception of a water table” (which my Affidavit demonstrated), and which is further affirmed fully by the attached letter from professional hydrologist/hydrogeologist Lori Carpenter (Exhibit 3). As she wrote, conducting soil pit analyses (and much more) is consistent with professional practice. Soil pit evaluations are also consistent with TRPA’s own general practice, as TRPA staff knows, or should: So the position must be either TRPA doesn’t know what a professional soils-hydrology report is, or it does know and didn’t require one, changing requirements for similarly-situated applicants without a basis, changing requirements arbitrarily for Verizon. It looks like the latter to me. Capricious.

The RGR was a lame duck from the start with regard to ground water hydrology. I pointed out that it failed to note the presence of nearby Bijou Park Creek, which is borderline negligent in my view. I am sympathetic because the drill-rig examiner was a geotechnical “E.I.T.” –an Engineer-In-Training, likely a new graduate, an apprentice under the supervision of a licensed geotechnical engineer. Further, the engineer-signer of the 2022 RGR was different than the original 2019 engineer-signer-EIT overseer, and obviously concerned with changes to the seismic-geotechnical engineering aspects for the enlarged foundation, since no changes were made to the hydrology and drainage findings. They were presumably reviewed and *fine from a geotechnical standpoint*. The drainage recommendations therein were for the use of Verizon for its engineering design, not for TRPA use in evaluating subsurface hydrology. With its many

exclusions, limitations and references to drainage and ground water, there is no way this can reasonably and professionally be considered a suitable report to conclusively demonstrate the *absence* of the reasonable possibility for ground water interference or interception of ground water as a result of the excavation. I'm more sympathetic towards the RGR and the geotechnical engineers than the TRPA senior staff reviewing, who should have rejected it as inadequate to the task. Why the RGR was considered suitable is not articulated, so the decision was arbitrary.

We have further evidence that TRPA knew it had not required a proper soils-hydrologic investigation, coming after this Appeal was filed, on September 1, 2022. Rather than requiring a proper and independent "new" report from Verizon to fulfill Permit Condition 3.F., over our objections TRPA staff conducted its own after-the-approval soil-hydro examination by a soil scientist in the pit excavated for the tower, examining pit soil profiles much as I and Ms. Carpenter suggested. The decision not to require the report from Verizon was arbitrary, and apparently still well within the 30-day limit TRPA had to review the application for completeness (ROP 4.3), when it jumped the requirement and determined to approve the revised Plans without the necessary soil-hydro report. Again, we vigorously object to inclusion of the contents of the TRPA soils-hydro report in the record of this Appeal as improper and prejudicial.

Summarizing: Shortly after it received its Final Permit, Verizon violated condition 3.F. by submitting a geotechnical report that was not new, and that was deficient, instead of a proper soils-hydro report for the deeper excavation. TRPA nonetheless accepted the RGR in violation of Code 33.3.6.B and used it improperly for approval as a "soils-hydro" report, bypassing the rules concerning "Major" and "Minor" plan revisions in the process, despite the "shall" wording: Major plan revisions "shall be treated as new or modified projects." I could not determine if the 2022 content and methodology was approved in advance by TRPA, as required by the Code. If so, it seems staff erred by not approving the methodology in advance and, if not, failed to see that was done. As a result, a new report by a properly trained professional such as Ms. Carpenter was neither submitted by Verizon nor required by TRPA. That fact alone should have been enough to uphold the Appeal's stay request, given that no proper investigation was done, but instead TRPA promoted the bogus RGR to allow the impact to proceed based on the thin absence of evidence from the RGR, knowing any environmental damage could not be fully undone. The absence of evidence is not necessarily the evidence of absence, and that really fits here; the TRPA authorized and accepted report must demonstrate an absence of adverse effects on ground water resources (and did not) or TRPA "shall" prohibit excavation, and failed to do so. Because **TRPA has failed to proceed in a manner required by law, the Appeal must be upheld.**

I underlined "absence of evidence" above (my words) because I have noticed TRPA likes to play that idiot card to its advantage, and in various ways. Here, it lacks required evidence, and uses that as a basis to assume that is evidence of absence. No, that is a flaw in logic; the data was insufficient to draw a valid conclusion. Wikipedia informs that this is a sort of "arguing from ignorance" and

"is a fallacy in informal logic. It asserts that a proposition is true because it has not yet been proven false or a proposition is false because it has not yet been proven true. This represents a type of false dichotomy in that it excludes the possibility that there may have been an insufficient investigation to prove that the proposition is either true or false.^[1] It

also does not allow for the possibility that the answer is unknowable, only knowable in the future, or neither completely true nor completely false.^[2] In debates, appealing to ignorance is sometimes an attempt to shift the burden of proof.” (underlines are weblinks)

Yes, it’s an illogical attempt to shift the burden of proof, when it is TRPA’s job to fully evaluate impacts based on all available information.

We saw this fallacious logic, arguing from ignorance, used by TRPA in the Eisenstecken Appeal as well, concerning issues with radio-frequency radiation (RFR) and microplastics. You can now see that these findings are unscientific, specious and arbitrary. The Staff Report opines, “TRPA could choose to regulate RF [sic] in the region should cellular facilities be proven to have a particular adverse effect on the unique environment of the Tahoe Region. TRPA has not received any such proof of adverse impacts of RF [sic] particular to Tahoe and therefore will not reexamine the determinations of the FCC.” (p. 327, March 23, 2022 Board Agenda) I critiqued this position as unscientific in my letter of October 2021 (Exhibit 4). TRPA’s statement it “has not received any such proof” is arguing from ignorance, and shifting the burden of proof, like there is something so unique about the environment of the Tahoe region that it is immune from all the adverse effects shown in relevant science studies provided in the record. That is incorrect. Likewise, on p. 307 of the March 2022 Board agenda: “To the extent Eisenstecken is limited in this appeal to raise only issues presented to the Hearings Officer, Eisenstecken is barred here from raising new issues . . . Eisenstecken does not supply any evidence of fallen plastic needles in waters of the basin or evidence they degrade into microplastics or that degradants traced to faux needles have actually ended up in Tahoe Region waters.” In disagreement with the latter statement, for testimony and evidence the needles degrade to microplastics was presented, we see here a desire not only to exclude important evidence of water quality impacts completely overlooked by TRPA in its myopic review of the Project application, but another attempt to shift the burden of proving impact to anyone but the myopic TRPA, which won’t bother to analyze the evidence spoon-fed to it, and which never sees an impact it can’t arbitrarily dismiss as insignificant when desired, often using the fallacious “absence of evidence” argument.

However illogical, the Board eats such findings like candy as a basis to allow significant and cumulative impacts, as in the case of RFR emissions, but many other impacts as well. Thus, Lake Tahoe’s visual water conditions and water quality continues to decline rapidly. I will add that the Appellants have no evidence from TRPA that its actions have slowed or stopped the ongoing declines in Lake Tahoe water quality and clarity, or prevented pollution by microplastics. We do have evidence TRPA has permitted uncontrolled discharges of deadly, toxic microplastic wastes on an industrial scale from the monopine towers it approved before 2022. And it continues to approve these willfully in pursuit of its agenda to blanket Lake Tahoe in radiofrequency emissions, and pollute the waters of the Lake Tahoe region with toxic microplastics, not only with this tower, but also a new Verizon monopine tower approved this August at the old Ponderosa Ranch TV filming location right near Lake Tahoe.

TRPA called the Affidavit’s concerns with ground water on the Project site “speculative.” I am a speculator at times, somewhat like an experienced investor who manages funds in a portfolio, sometimes it pays off, sometimes not. Like any good speculator, my speculations are not baseless, however, as my site analysis shows (Affidavit, pp. 13-14). I’m going to speculate the

following: TRPA itself will eventually produce evidence of the plastics it has increasingly approved in its ignorance over the years, plastics which deteriorate under the action of sunlight, mechanical wear and weathering to microplastics: monopine towers, all the recycled and virgin polyvinyl chloride (PVC) docks approved over waters, decks, piers, and boardwalks in all the most sensitive areas such as shorezones and stream environment zones (SEZ), all the decking at marinas and the Tahoe Keys' private docks, etc. We shall see, in due time, what PVC is sited and contained in and around the waters of Lake Tahoe under TRPA's watch and approvals. As these materials deteriorate into microplastics, I speculate that the evidence will show TRPA is in large part responsible for contamination of the waters of Lake Tahoe with toxic microplastics from PVC by approving of the use of plastics in such settings without any analysis of the long-term impacts, where natural wood alternatives would have been far more preferable and appropriate.

Project Review Procedures; IEC Requirement

I assert the approval was improper for the new Project application under the following regulations, which specify what is proper. Code section 2.2.1 specifies project review procedures: "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." Project review procedures are further described in Chapter 5 of the ROP. For non-exempt projects such as excavation greater than 5 feet, the applicant is to fill out and certify an Environmental Impact Checklist (IEC) form for staff review. By Rule "5.2.6. Appropriate environmental documentation, in accordance with Article 6 of these Rules" is required as a part of a complete application, which begins:

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.

I reviewed Verizon's Form Application for the Plan change, noting the Checklist of items for a complete application left the IEC requirement unmet. That is, though required for a complete application, the checkbox was left blank, with no explanation. Staff missed or overlooked that. There was no IEC for the new project application, as required generally, in every other case according to the ROP. I opined in the Affidavit, p. 2, that the plan revisions invalidated a number of findings in the 2019 IEC provided with the application for the Project approved following the Eisenstecken Appeal. It is staff's charge to review the application for completeness, and there is no evidence to suggest the IEC requirement was followed by rejecting the application as incomplete. **Therefore, there was no basis for staff to approve the new project, based on the plan revisions, in the absence of a valid IEC, so the Appeal must be upheld.**

The potential impacts can't be assumed to be the same as they were for the prior Project, and that old IEC is of no use. If you say, "Well, the staff reviewed the plan changes/new application info

for consistency with the 2019 IEC,” I would challenge that and ask to produce the written record of analysis and findings to support it. There was nothing about an IEC in the records of approval TRPA provided, other than the empty IEC checkbox in the application. There isn’t any basis for consistency with the reasonable possibility for ground water interference I pointed out above and in the analysis in my Affidavit. No, staff just moved to approval without an IEC, with a finding based on nothing but a deficient RGR, stating “ground water is not expected to be encountered in this location” but, if it is, “contact TRPA immediately to discuss options for dewatering.” A contradiction, all improper, no substantial evidence provided or discussed as fact finding. Arbitrary.

Since no IEC was submitted there was no evaluation of the new Project impacts. In testimony heard during the Eisenstecken Appeal denial for the cutting of some 30 trees on the Project parcel for defensible space ahead of the Project approval, your counsel correctly stated in effect that, yes, the tree removal would affect the scenic baseline in the scenic analysis for the tower, because what has to be analyzed for any Project is the environment, including the regulatory environment, as it exists when the new project application is made. In this case, we have a whole new set of City of South Lake Tahoe ordinances that would need to be analyzed concerning wireless services facility siting, among other things. Faced with having to require a new IEC, TRPA turned away from the regulation, for it would essentially set the Project back to the starting point (which Verizon already did), for project review begins with the IEC analysis, or should. No basis for the arbitrary turn, in violation of law, was provided and I assert it was a special (illegal) favor for Verizon’s benefit.

Yes, a new IEC is required to be evaluated. Based on review of a valid IEC TRPA would determine whether to prepare an Environmental Assessment (EA) under ROP section 6.5. Then, section 6.6 provides, “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.” This is the Finding of No Significant Effect (FONSE), as applied previously to the Project. A FONSE is appealable under rules subsequent to Project approval, as just one part of the Project documentation. **No FONSE applicable to the new/revised Project was prepared or certified, as required, in violation of ROP section 6.6., therefore the Appeal must be upheld.**

TRPA’s applicant Verizon could have used the information from the prior IEC, to the extent it is valid, to craft a new IEC, but staff did not require a new IEC in accordance with ROP 5.2.6. A fee was required under ROP 5.2.1, but a number of other necessities in the Checklist for a complete application were not checked (not provided), stating “NA,” including 9. Floor Plan, 11. Grading Plan (proposed cut and fill), and 12. Projects Requiring Hearing Officer or Board review. Maybe the lack of floor plans explains the discrepancies in coverage allowed versus coverage approved? There certainly was grading proposed, double the prior, so the “NA” is a mystery.

Based on my prior writings on the soils-hydro report, the applicant didn't provide, and staff did not evaluate the application against, ROP 5.2.8. "All reports or studies necessary to show compliance with applicable provisions of the Compact, Regional Plan, Code, other TRPA plans, maps, programs, and rules." This is another backstop to require a proper soils-hydro report, besides the Permit Condition 3.F., that TRPA ignored. The conclusion is that TRPA arbitrarily applied some of the ROP specifications concerning a complete application, and left others out, without reason given, in the time TRPA took to review and approve the new application submitted. There is an email in the record from TRPA staff questioning whether a new soils-hydro report would be required, the question answered only by the evidence: it was not required.

Had TRPA followed the requirement for the applicant to provide a new IEC, new information that was not available in 2019 would have to be considered, such as the new City of South Lake Tahoe ordinances, among all the other things on the IEC. Eschewing that, and all the Rules at issue in the Affidavit, TRPA staff moved instead on the improper approval following no regulation whatsoever, simply approving of the new application under the old Permit approval (now under litigation) for the benefit of Verizon. Again, I have no problem with Verizon amending its Project plans, and I don't have a problem with the Code or ROP, which TRPA is a real stickler for enforcing as it sees fit against others they don't agree with, such as Ms. Eisenstecken, or Mr. Benedict, the latter a co-Appellant here; I take issue with TRPA ignoring its own regulations for any reason, as here, violating public due process rights in the face of known controversy.

Exception Rules

My Affidavit, in large part, showed how confused staff was in applying its own exception rules for the deeper excavation. In the first place, letters A and B of Code section 33.3.6.2. are independent requirements. Each must be met to approve an exception to section 33.3.6.2, irrespective of order. Those Code sections, in relevant part, are:

A. Groundwater Interception

Groundwater interception or interference is prohibited except as set forth below:

1. Excavation is prohibited that interferes with or intercepts the seasonal high water table by:

- a. Altering the direction of groundwater flow;
- b. Altering the rate of flow of ground water;
- c. Intercepting ground water;
- d. Adding or withdrawing ground water; or
- e. Raising or lowering the water table.

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;

- b. Retaining walls are necessary to stabilize an existing unstable cut or fill slope;
- c. Drainage structures are necessary to protect the structural integrity of an existing structure;
- d. It is necessary for the public safety and health;
- e. It is a necessary measure for the protection or improvement of water quality;
- f. It is for a water well;
- g. There are no feasible alternatives for locating mechanical equipment, and measures are included in the project to prevent groundwater from leaving the project area as surface flow, and any groundwater that is interfered with is rerouted in the ground water flow to avoid adverse impacts to riparian vegetation;
-

B. Excavations

Excavations in excess of five feet in depth or where there exists a reasonable possibility of interference or interception of a water table shall be prohibited unless TRPA finds that:

1. A soils/hydrologic report prepared by a qualified professional, which proposed content and methodology has been reviewed and approved in advance by TRPA, demonstrates that no interference or interception of groundwater will occur as a result of the excavation;
2. The excavation is designed such that no damage occurs to mature trees, except where tree removal is allowed pursuant to subsection 33.6.5: *Tree Removal*, including root systems and hydrologic conditions of the soil. To ensure the protection of vegetation necessary for screening, a special vegetation protection report shall be prepared by a qualified professional identifying measures necessary to ensure damage will not occur as a result of the excavation; and
3. **Excavated material is disposed of pursuant to subsection 33.3.4: *Disposal of Materials***, and the project area's natural topography is maintained pursuant to subparagraph 36.5.1.A. If groundwater interception or interference will occur as demonstrated by a soils/hydrologic report prepared by a qualified professional, then the excavation can be made as an exception pursuant to subparagraph 33.3.6.A.2, provided 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.

While 2 and 3, above were omitted entirely from the consideration (I'm not aware of a report pursuant to 2, above), note the last sentence above: If the soils-hydro report prepared by a qualified professional demonstrates ground water interception or interference will occur, the exception can only be allowed "provided 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." **No such measures were included in the exception granted, thus violating the condition, even if the RGR is capriciously deemed adequate by TRPA to assess ground water conditions.** It appears no

substantial analysis was done for potential adverse impacts on ground water flows or SEZ vegetation, with the SEZ boundary downhill and some 60-80 feet from the excavation. Rather, staff writes in the approval letter to contact TRPA if dewatering is needed, leaving the reader to wonder whether and how “measures” will be deployed, as none are included. Notification to TRPA of encountering ground water is not a “measure” included in the Project approval to meet the requirements. **Because no such measures were included, there is no legal basis to move to consideration of an exception under Code section 33.3.6.A.; the Appeal must be upheld or the agency will fail to proceed in a manner required by law.** (This is typical of the kind of deficient TRPA analysis I witnessed throughout my career at the Water Board.)

Nonetheless, staff then next improperly moved to consideration of the exceptions allowed under subparagraph 33.3.6.A.2., which consideration now stands as irrelevant. That said, I stand on my critique and analysis of that exception in the Affidavit. Additional comments on the selected tower-industry design standard follow.

Safety Issues

I pointed out that the tower’s TIA-222-H design standard and approved design through the City Building Department did not include any ice loading on the tower, which I believe could create a dangerously unsafe, deadly condition that could cause or contribute to collapse of the tower. I think TRPA owes it to the public to disclose in the Staff Report whether that is correct, and that they are not approving a dangerously *underdesigned* tower because the design engineers and City officials fully considered and dismissed the need to include ice loading, and why that is not negligent with regard to the safety of the tower which you so deem a benefit for public safety—despite the design Class II undermining that presumed need. What it looks like to me is that people with no experience with Tahoe weather designed this tower for some other, non-snowy setting, and it all got overlooked. Please provide evidence I’m wrong!

As in the Affidavit, I lean on the design criteria chosen by the structural engineer to determine what constitutes a telecommunication tower to be “necessary” for public health and safety, and this tower, being designed to Class II standards, doesn’t meet the criteria, as explained at length in the Affidavit. No, the Class II design puts that TRPA safety finding to the test, and it fails. I will go even further concerning the chosen design Class for the tower and state, in my opinion, the Ski Run Tower could easily qualify as, and be built as, a Class IV facility. From the tower industry design article in the Affidavit:

“Risk Category IV: Failure results in substantial hazard to the public. Failure of these structures typically means harm to the public extends well beyond the site of the failure. Often remediation cannot be completed due to the nature of the failure (e.g. nuclear facility). Failure of these structures also typically ensures failure of additional multiple systems critical to the public (e.g. loss of power results in loss of water and transportation). These structures can be considered as an essential facility.”

The tower would qualify for Class IV not because necessary for the purposes of emergency communications, but rather to prevent injury and property damage from collapse and/or associated fire. These Classes are designated to provide greater engineering safety factors, in consideration of all the values at stake. In choosing the Class II design, which is the default Class for facilities not needed for emergency services/public safety, Verizon simply cheaped out with regard to safety and chose a lesser design: less costly, less sturdy, less reliable, less safe. More prone than Classes III or IV to fall and cause a potentially disastrous fire. I discussed in my October 2021 letter (Exhibit 4) for the Permit Hearing engineering safety factors and related risk considerations, and received no reply nor concession in the record. These important matters simply went unaddressed.

Besides orthodoxy, if memory serves, my recollection is TRPA's Board leaned hard on a letter in the record from an El Dorado County Sheriff's personnel which indicated some gap in coverage in the Bijou area. My understanding is that such safety/police agencies have their own frequencies and emergency communications systems, 911 calls are routed through any necessary carrier, and emergency communications are tied to facilities in Class III or Class IV. This officer's anecdotal testimony seems to override all the other unaddressed testimony and information concerning fire dangers, tower collapses, disruptions in cell service during fire emergencies, engineering safety factors, insurance concerns, evacuation concerns, and other concerns I and others expressed. I honestly think when TRPA is presented with real analysis and facts they disagree with, or outside their areas of expertise, they get flustered and invariably fall back on their seemingly unassailable, infinite discretion to interpret (and break) the laws, and then just apply bureaucratic weight to just push on and hope for the best. See my letters in advance of the Permit Hearing (Exhibit 4) where I testified, and in advance of the Appeal Hearing (Exhibit 5), where I testified. None of these comments are satisfactorily addressed in the records of the approval and denial, respectively. I give the officer his due, but wonder if the Sheriff's representative knows anything of the industry's history of tower fires? There have been many, monopine towers and many others, as the record in this matter shows.

The cell tower industry is relatively new, especially the monopines, which have been built for only about 20 years, so they don't necessarily know from long experience how these engineered structures will respond to environmental forces such as here at Lake Tahoe, with our extreme ice, snow and wind loads. This is not an industry that is forthcoming about their many tower fires and collapses, their engineering safety record, or that frankly cares much about fire danger. Being among the world's most profitable industries, if a telecom burns down our City or Basin due to a tower collapse or fire, they will be okay, maybe lose a few towers. If the Basin burns, we lose EVERYTHING, and for the sake of a cell phone – when other safer communications alternatives exist. I assert now as I did last October and March, TRPA is setting the stage for a firestorm by approving, piecemeal, untold numbers of macrotowers and small-cell wireless facilities that could destroy our communities, by promoting these towers everywhere with no environmental impact analysis whatsoever, and no evaluation of fire-safe alternatives or mitigations. (Yawn.)

TRPA's Staff Report for the March 23, 2022 Appeal Hearing, p. 308, responded to the fire safety and collapse issues: "For fire risk from alleged terpene production, TRPA defers to the FCC's environmental documentation and record as the issue is not unique to Tahoe." Deference to the FCC environmental documentation? What documentation would that be, with any relevance? I assure you there isn't any record concerning terpenes. The FCC is arguably the most corrupt federal agency in Washington, and that's saying a lot; they've got more and more competition these days. I will say it again as I said it before, any person or agency willing to hide behind the notoriously corrupt FCC and its regulations has no integrity or credibility as far as I'm concerned. None. I'm entitled to my opinions.

The Staff Report continues: "For forest fire risk, TRPA is unaware of cell towers being any more risk prone than existing structures built to fire code in the Tahoe Basin or any **forest** fires ignited by cell towers." (emphasis added) The illogical approach again, "arguing from ignorance" in purported or real unawareness. The increased fire risk is dismissed with a sentence, despite the record evidence provided of a massive wildfire in Southern California started from a utility pole-mounted cell tower collapse. I guess that wasn't "forest" enough for counsel, weasel words. Nor did TRPA do any analysis or make any findings concerning its own investigations into tower fires. I see it as TRPA expecting to be spoon-fed all the impact evaluations and risks, staff unable or incompetent to do its own research or fact-finding, only able to speciously and illogically dismiss comments and impacts it doesn't want to hear, understand, or address. Begging off evaluating any fire risk associated with towers, designs, alternatives, as not in TRPA's "ambit" or sphere is another bald assertion with no basis, for if TRPA were to follow Compact Article VII and prepare an environmental impact report for the Tahoe Basin's ongoing, piecemeal wireless roll-out, the fire risks could be evaluated and mitigated, right in your "ambit" as the Tahoe Region's planning agency. This sort of legalistic mumbo-jumbo has no merit, and earns TRPA the colloquial monikers it continues to unsuccessfully live down regionally, take your pick of which.

The Staff Report for the Oct 14, 2021 Permit Hearing Appeal provided only this finding concerning the public safety need, a level of analysis that boggles the mind on this hugely important life and death issue of fire safety:

Chapter 50 – Additional Public Service Facility Findings:

(a) There is a need for the project.

Cellular coverage maps show service gaps in the area and existing facilities are not meeting service needs associated with increased wireless **data** needs. This project will provide additional facilities to meet service needs in the area. **The additional facilities will provide improved wireless communication service in emergencies to help protect public health, safety, and welfare. (emphasis added)**

"Data" is not cellular phone service, and we know the issues with capacity in South Lake Tahoe center around increasing data for internet usage, which is not needed for public safety, persons downloading movies and the like. The latter statement is nothing more than orthodoxy, things assumed as fact and practice without basis in the face of challenges, such as the recent court ruling citing that expansion of data services, for profit or anything else, is not a protected action

under the Telecommunications Act, which is for phone service. The orthodoxy is, everyone just knows cell phones are needed for public safety, and cell phones depend on the towers, and that's what TRPA is practicing with the finding. Cellular services are often the first thing to fail in emergencies, that is why facilities with Class II designs are not relied upon for public safety telecommunications; those in Classes III and IV are for that purpose. Citing the design standard guidance, p. 3, it is frequently misunderstood for safety purposes, just as TRPA asserts:

“... Essential communications” are defined within ANSI/TIA-222-G Annex A, A.2.2 as structures used primarily in support of civil or national defense, emergency, rescue or disaster operations, military and navigation facilities. On occasion, interpretations have been made based on the terms “emergency” and “rescue” in the above definition as validation of Class III requirements for wireless telecommunication towers, as the expectation is typical personal communication use of a mobile wireless device may be used during an emergency or rescue event, thus mandating the need for the higher classification. This is not the intent of the Standard. . .”

Land Coverage Exceeds Allowable Coverage

Please refer to the land coverage analysis in Exhibit 6. The Exhibit's analysis shows the various plan sheets with the revised Approved Plans are inconsistent with regard to the foundation dimensions, and moreover, inconsistent with allowed coverage – **in every case I measured it is way over the allowed 736 square feet of approved coverage available to the Project, in one case 29% over allowable. 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.** By the estimates in Exhibit 6, if built according to “Acknowledged” final revised plans, **the Project will exceed allowed coverage for the Project on this sensitive parcel by either 49 square feet, 165 square feet, or 98 square feet, depending on which Verizon drawing you measure.** I tend to side with the latter two estimates, as the drawings do not involve the roof overhang, which obscures the first. In any case, the excess coverage is not zero, which is what is available for excess coverage.

It appears the Verizon designers were not paying attention to coverage allowances, and TRPA was insufficiently diligent in verifying dimensions for coverage purposes and consistency. Given the emphasis TRPA seemingly places on its strict coverage rules, one would think Verizon would be more Permit compliance concerning coverage. By all appearances, in the rush to “get the Permit out” the plan dimensions were not verified by TRPA. To do other than uphold the Appeal is a miscarriage of justice for all those thousands of Permittees and prospective permittees who have suffered to comply with TRPA coverage rules, and makes a mockery of the coverage/Permitting system. I mentioned in the Affidavit that the parcel was overcovered. I will emphasize it is not just a little overcovered, the SEZ on the site is majorly overcovered, as are the sensitive 1A lands. There is no legal basis to give Verizon a pass for their plan errors, caught on Appeal, or process another remedial post-approval coverage transfer of some sort on this

beleaguered and overcovered Project site – after failing to grant a full and proper stay and rushing us to Hearing. I believe such action would be unprecedented, highly improper and without legal basis. **You must uphold the Appeal because this approval allowing overcoverage is inappropriate and must be set aside in order to proceed in the manner required by law.**

I have noted TRPA's extreme concern over the years with getting the coverage numbers right, applying the Rules to others, and so forth. But of what use is all that effort when the final analysis fails, as here; it is what gets built that affects the environment, not the coverage write-up and all the other lead-up. It seems to me one of staff's primary jobs in "plan checking" should be to verify that final plan dimensions reflect the approved coverage allowances. That is far from my experience. This is more typical of my experience: On the Projects I independently issued requirements for in my work, I would often have to reject inconsistent and incorrect TRPA-approved plans upon my own verification of coverage and project plans, and send the applicant back to TRPA until the plans were consistent, final, and correct for Water Board purposes. Contrary to TRPA, we required a complete "report of waste discharge," before any approval action was taken. No partial plans or incomplete plans were considered for formal action as TRPA has enacted in the ROP. If something needed to be changed, outside the scope of the approval, we began again, as should be done here if Verizon wants this chosen, arbitrary design change. It's really that simple. All else is to obscure the facts.

The Global Wireless Expansion, and TRPAs Role

My father-in-law was a Captain on the Los Angeles Fire Department for many years, a high-rise fire safety regulator, who used to say people fell in one of three groups: those who comply willingly and fully with the law; those who do the minimum necessary to comply; and those who have to be forced to comply at every turn, the scofflaws. For the latter, things could go the easy way, or the hard way, their choice. I suppose people can be divided much the same way on the issues associated with the dangerous and deleterious biological effects of electromagnetic fields and microwaves in the environment: those who understand the science (engineers, researchers, doctors, biologists, etc.) and have sounded the global alarm concerning the planned 5G systems and existing systems; those who don't understand the science, the laws and FCC regulatory schemes, the telecom legal bully, the greater mass of the public who know little and accept the orthodoxy that cell phone and wireless technology is safe and a universal good, to be blindly embraced as a consumer; and, those who may or may not understand the dangers and pitfalls but are promoting the technology anyway because it serves their own purposes and agendas, witness TRPA staff. These are just observations (not judgments) of human nature on a free-will planet, with consequences. I will leave the judging to judges, as in the Eisenstecken case.

I have an associate, a rocket scientist and aerospace-electrical engineer, now retired from a career in the U.S. Air Force and contracting to put satellites in space. He told me he learned through a well-placed contact, a high-level satellite-telecommunication engineer at Buckley Space Force Base near Denver, that the military can control all wireless communications, presumably by

arrangement with the telecoms. The following was reported by the contact from two independent sources working at testing new 5G microwave antennas: when the 5G antennas were tested in Low Power Mode, all the birds and animals within 1000 feet were injured and killed, with birds dropping out of the sky. Whether small-cell or macrotower, the antennas are similar. A recent report from Scandinavia definitively associated bird deaths with 5G systems in use; again birds dropping from the skies, to be considered along with mass bird deaths reported elsewhere, but mainly outside of cities, where 5G testing can't be done. Whether you believe my associate's hearsay or not, what we have coming from the telecoms, the 5G systems, was developed for military weapon systems that can see through walls to target individuals and locations by cell phone with their pulsed microwave beams, which can maim and kill. That is not secret information, perhaps just not widely known.

If fully implemented, every citizen in the nation and world will be, for the first time in history, surrounded and dosed with radiation by this invisible 5G telecom weapons system whether they want it or not, as will all the biologicals. The CIA, FBI and DHS, the militaries (all the mass surveillance agencies) and telecoms and mass media tech giants want it for profit, control and other undemocratic reasons, and are forcing it on the rest of us who don't, enabled by our Congress, using the tactics from Big Tobacco's well-worn playbook and other subterfuges. But there is a difference: people had a choice about whether they wanted to smoke tobacco and incur the health risks. Humanity, all the kingdoms, are not being given a choice about whether to be bathed in the microwaves, despite zero human or other biological testing on the health and environmental effects of 5G by the FCC, the FDA, or any other U.S. public health agency. Madness, or a diabolical plan? They must have their 5G weapon on every street, ostensibly to avoid a "gap" in service coverage. Uh-huh.

There is a current saying since the so-called *Citizen's United* Supreme Court decision took the lid off of lobbying money, campaign contributions and the like: Congress can't be bought; it already has been, and no one's selling. The telecoms are major owners, and also of the FCC appointed by Congress. Since we already know the telecom wireless industry is a purveyor of dangerous products that deliver a dose of poison with every use, as well as a massive global plastic and e-waste generator through their designed-obsolescence sales model, I take no comfort in having such a 5G weapons system in the hands of a fascist government promoting this technology. SMART = Secret Military Applications in Residential Technology.

Some of you are old enough to recall the 1960s-era TV series *The Twilight Zone*, or caught it on replay. One of the most popular episodes in the very-popular series was titled, "*To Serve Man*," a story centered around "contact" with extraterrestrial humanoids from the cosmos, nice beings with highly advanced technology to serve mankind, beings who communicated telepathically (no cell phone). Their gift was a book of knowledge; humans had to decode it from their language. There seemed to be a great resonance with the story among the viewers, and one day a parallel occurred to me with the 5G systems. So I sat down for a couple of hours and wrote a story in rhyme, as I am a musician and songwriter in addition to all else I am. I have a certain knack, at

times, for saying a lot with a few words in my creative writings, versus saying a lot with a lot, as here. It will entertain you with some of the big-picture reasons why I am opposing this heinous 5G-wireless rollout. See my version of *To Serve Man* in Exhibit 7 to enter *The Twilight Zone*.

Appeal Number Three

When I came to TRPA 2020 as a citizen-ally for the environment on these matters, I felt treated as a public enemy and ignored because I opposed this Project on various legitimate grounds. I requested to be notified of upcoming actions concerning wireless facility applications and planning activities, and was repeatedly ignored. No mailing list of interested parties was maintained, despite ROP 2.14: “TRPA shall maintain a list of all persons who have requested notice of TRPA meetings. Requests shall be valid for one year unless renewed. Media organizations and public agencies, on request, shall receive notices free of charge. Reasonable fees for notices shall be set by the Executive Director.” TRPA can’t produce such a list with my name and contact info on it because the only “notifications” I ever received from TRPA were in direct e-mail replies from staff in response to my inquiries. It appears TRPA has abandoned this rule it set for itself in a deliberate attempt to illegally exclude the public and has failed to proceed in a manner required by law, generally in this regard. I am not aware of a superseding regulation that would nullify the ROP requirements. I eventually gave up on the requests as a waste of time. I also thought it was interesting, as I learned after I filed the Appeal, that TRPA’s link to initiate a Freedom of Information Act request was broken. Just one more way to stymie public involvement. Taken alone, I wouldn’t say that, but look at the weight of evidence.

I thought it was deplorable that pdf attachments to emails I and others provided for the Verizon hearings, containing substantive comments, were not included in the record of public comments posted online with the transmittal email. Nonetheless I was assured by staff my e-mailed comments were in the records of the prior Appeal hearings. With written comments and oral comments during hearings I offered the best, honest advice and comment I could muster at the time concerning effects on environmental health, public safety and fire threats, and later on issues with plastic wastes and water quality.

The latter was my attempt to dissuade TRPA (you) from your folly, knowing far better than TRPA the water quality laws of the state of California, and regulations of the Lahontan Water Board. I told you TRPA had no discretion or authority to allow prohibited toxic waste discharges as Verizon proposed, and that your action would not withstand scrutiny by the Water Board. That was my failed attempt to save you from embarrassment by approving yet another giant monopine turd in the space you occupy with the Water Board. Arguably, as I previously glossed, the Water Board is the most powerful water quality ally you could have, if you don’t destroy their trust. My words did not matter to TRPA.

Now, Water Board orders have been sent to the Lake Tahoe Basin telecoms in California to begin to abate and regulate the deadly, toxic microplastics and lead TRPA has both ignorantly

and willfully allowed to pollute our sacred Lake Tahoe and region. I wasn't listened to or understood by TRPA when I said that I spent much of my professional career cleaning up the messes left by ignorant and willful polluters and desecrators, which is exactly what these monopines you have approved are, toxic messes. We don't want any more, and TRPA should be taking action to correct your blunders, not approving new facilities like this planned nuisance on Ski Run Blvd., against all law and reason.

TRPA has buried its head in the sand and dug in its heels on the issues of wireless radiation in service of its agenda with the telecoms, refusing input from interested parties. The remaining public seems large unaware of what is occurring, hypnotized by telecom gadgetry, hype and mass media, otherwise engaged and challenged by life. I urge you to now embrace your planning mandate to prepare an EIR encompassing all wireless facilities in joint participation with the Water Board to develop its required environmental document(s) under the California Environmental Quality Act, as it may, following the Compact and engaging the public to seek balanced, safer connectivity alternatives available for people and the special environment at Lake Tahoe. The other choice is to break the applicable laws to serve your telecom buddies to the detriment of Lake Tahoe, its surroundings, and its people. I believe people are born knowing right from wrong, and it is never too late to atone and correct past errors going forward. Thus we learn. **Please proceed in the manner required by law: Uphold our Appeal.**

List of Exhibits:

Exhibit 1. Affidavit and Stay Request, August 22, 2022

Exhibit 2. Marshall/Miller email exchanges, late August 2022

Exhibit 3. Lori Carpenter, MS, Letter Report on RGR and Soils-Hydrology Assessments

Exhibit 4. Miller Comment Letter to TRPA re Permit Adoption, October 2021, w/Attachments

Exhibit 5. Miller Comment Letter to TRPA re Appeal Hearing, March 2022

Exhibit 6. Coverage Analysis from the Approved Plans

Exhibit 7. *To Serve Man*, a rhyme by Alan Miller