

Date: November 18, 2023

To: TRPA Governing Board

From: John L. Marshall, General Counsel

Subject: Self-Assessment, December 2022 to November 2023

This self-evaluation provides Governing Board members with an overview of my responsibilities and representative accomplishments during the review period. The responsibilities of TRPA General Counsel divides into the following categories: legal advice and counseling, general legal compliance, code compliance, litigation, relationship building, management of legal staff and resources. These general topics are be subdivided into work categories as shown.

A. Internal Legal Advice

1. Development Projects

I spend significant time aiding the Permitting and Compliance and EIP Divisions during the review and process of development applications. Advice provided includes interpretation and application of Regional Plan and Code of Ordinances to specific development proposals, meetings with staff and/or applicants and their representatives, and review of environmental documentation and staff reports. The review year also included of appeals from the Hearings Officer/Executive Director to the Governing Board. I draft the staff reports and present the appeal issues at the board meetings. Accomplishment examples:

- a. Application Review
 - i. Waldorf Astoria Lake Tahoe
 - ii. South Lake Tahoe Refuse Biomass Facility
 - iii. Latitude 39
 - iv. Shoreline Plan Implementation (Pier/Mooring/Boulder Relocation Applications)
 - v. USFS Lily Lake Trail
- b. Appeals of Permitting Actions
 - i. Miller (appeal additional excavation depth for Ski Run cell tower)
 - ii. Metcalf (appeal of denial of non-littoral buoy application)

- iii Dobbins (applicant appealing denial of buoy permit)
- iv. TTD East Shore Express (citizens appeal of extension of permit)

2. Plan and Policy Development and Adoption

I provide legal advice to the Long-Range Planning and Transportation, EIP, and Research and Analysis Division in strategic development of plan and policy development, including drafting and editing plans, codes, and rules, review environmental documentation and findings, and staff reports.

- d. Accomplishment examples:
 - i. Phase 2 Housing Amendments (Coverage/Height/Density/ADU's)
 - ii. Permitting Process Improvements
 - iii. Threshold Update Initiative
 - v. Washoe County Area Plan Amendments

B. Legal Compliance

1. Governing Board/Committees/Advisory Planning Commission

Open Meeting Law Compliance -- I review all notices, agendas and staff reports for legal sufficiency and possible policy implications. I also respond to Open Meeting Law complaints filed with the Nevada Attorney General's Office.

2. Public Record Requests

Supervise response to and review of all public records requests. Accomplishment: agency timely processed all records requests.

3. Personnel/Human Resources

Advise and aid Human Resources' and the Executive Director's management of agency personnel and practice.

4. Memoranda of Understanding/Contracts

Advise and help draft Memoranda of Understanding (MOU's) and contracts. Marsha and I share this work with Marsha reviewing most contracting documents.

5. Continuing Education/Training – To provide up-to-date legal advice, I monitor developments in applicable case law, e.g., cases interpreting Compacts and the Compact Clause, federal and state takings cases, California and federal CEQA and NEPA cases, Open Meeting Law/Brown Act litigation, Public Records Acts decisions. I also consult with various staff members and partners regarding impacts of proposed legislation on TRPA, including legalized marijuana sales, the federal Restoration Act, new state laws requiring housing starts and “as of right” approvals, etc. Specific accomplishment: providing specific “office hours” for staff; presenting at CWA@50 conference.

C. Code Compliance

Through weekly meetings, I provide legal advice and general guidance to TRPA’s Code Compliance team. We strategize about enforcement priorities, investigations, appropriate avenues for resolution of misconduct, settlement terms, and review of staff reports and presentations. The Compliance Team and I then negotiate with violators and their representatives/counsel all in aid of effective resolutions or proceeding towards enforcement litigation.

D. Litigation

I spend a significant amount of time handling litigation against and brought by the agency. Where TRPA is a defendant, we usually hire outside counsel to litigate the cases under the indemnification special condition of our permits. My work on these cases involves development of litigation strategies, development of arguments, review of briefs, and management of attorney billings. For cases brought by unsuccessful applicants, plaintiffs suing on non-indemnified agency decisions (e.g., policy and enforcement cases), I represent the agency and litigate the cases with the aid of our paralegal and contract counsel. I also monitor important pieces of litigation involving partners. During the review period the following cases were active:

1. Cases handled by outside counsel
 - a. *Garmong v. TRPA* (challenge to cell tower permit)(dismissed at district court, on appeal)
 - b. *Eisenstecken v. TRPA* (challenge to cell tower permit)(Motion to Dismiss pending)
 - c. *Harrosh v. TRPA* (challenge to a pier permit)(Motion to Dismiss pending)
 - d. *Miller v. TRPA* (challenge to additional grading for ski run cell tower; Magistrate Judge issued report and recommendation in TRPA’s favor)

2. Cases handled in-house

- a. *Bryan v. TRPA* (challenge to non-littoral buoy application denial)(summary judgment granted in TRPA favor)
- b. *Dobbins v. TRPA* (challenge to TRPA's denial of buoy application, case settled)
- c. *TRPA v. Reziapkine* (illegal mooring enforcement action; default taken)
- d. *Cal. Sportfishing Ass'n v. Lahontan RWQCB* (monitor challenge to Tahoe Keys CMT permits issued by Lahontan)
- e. *Incline Residents v. NDSL* (monitor challenge to NDSL's annual mooring fees)

E. Conflict Counseling

Throughout the review period I provided counseling to Governing Board and staff members regarding potential conflicts of interest with TRPA initiatives and projects.

F. Relationship Building

I build and maintain relationships with the legal representation of our key partners, include the California Tahoe Conservancy, both state lands agencies, the California and Nevada Attorney General offices, and local City Attorney and County Counsel offices.