

TAHOE REGIONAL PLANNING AGENCY  
LEGAL COMMITTEE

Zoom

March 23, 2022

**Meeting Minutes**

CALL TO ORDER AND DETERMINATION OF QUORUM

Chair Mr. Bruce called the meeting to order at 9:02 a.m. on March 23, 2022.

Members present: Ms. Novasel, Mr. Rice, Ms. Williamson, Mr. Yeates, Mr. Bruce.

Members absent: None.

I. APPROVAL OF AGENDA

Mr. Marshall stated no changes to the agenda.

Mr. Bruce deemed the agenda approved as posted.

II. APPROVAL OF MINUTES

Mr. Bruce asks for approval of minutes from the November 17, 2021. Mr. Yeates makes the motion to approve the minutes with correction to pg. 17 regarding the unanimous vote.

**Motion carried** by voice vote.

III. RESOLUTION OF ENFORCEMENT ACTION, JUSTIN SHEAFF/MOUNTAIN ADDICTION LLC, AUNAUTHORIZED TREE CUTTING, CALIFORNIA TAHOE CONSERVANCY PROPERTY, PLACER COUNTY, CALIFORNIA, APNS 092-010- 021, -035, TRPA v. Justin Sheaf, Mountain Addiction LLC, Case No. 2:20-CV-00945 U.S. District Court for the Eastern District of California

Mr. Sweet made the presentation for TRPA staff. On August 26, 2020, TRPA conducted a show cause hearing where a motion was approved to pursue a judicial action to assess Justin Sheaff and Mountain Addiction a civil penalty for conduct alleged in the TRPA May 8, 2020 Notice of Violation.

This violation involves unauthorized tree removal to create a route for snow cat access to a county trail system which occurred on the California Tahoe Conservancy Property located off Old County Road, Placer County, California (Slide 7). (Slide 8) Mr. Sweet shows the approximate area of disturbance from 585 Old County Road up through the red circle to the trail system that can be seen on the top edge of the circle.

In January 2020 TRPA received information from the California Tahoe Conservancy (CTC) that the CTC Property had been damaged by snow cat access behind the residence on the Mountain Addiction Property. The photos taken during the CTC inspection showed evidence of disturbance caused by the snow cat including tracks leading to the Mountain Addiction Property where the snow cat was stored.

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(Slides 10-13) Shows photos from the inspections from the January 2020 inspections. (Slide 9) On February 6, 2020, TRPA staff inspected the site and found that approximately 35 live trees of various sizes were cut and left along a trail on the CTC Property that could be used for snow cat and snowmobile access by Sheaff and Mountain Addiction. 5 of the 35 trees were larger than 14 inches dbh and were removed without approval by TRPA. (Slide 14) This unauthorized tree removal occurred in violation of TRPA Code Section 61.1.5 (Removal of trees greater than 14 inches dbh shall require approval by TRPA); and TRPA Code Section 2.3.2.M (The tree removal is a non-exempt project and must be reviewed by TRPA).

On March 18, 2020, TRPA issued a Cease and Desist requesting additional information from both Sheaff and Mountain Addiction. Sheaff and Mountain Addiction have stated that neither party were responsible for the tree cutting and had no knowledge of who could have been responsible. TRPA made several attempts to resolve the unauthorized tree removal with both Sheaf and Mountain Addiction through settlement discussions, show cause hearing, and the filing of a protective complaint but TRPA received no response to its proposals. On October 29, 2021, TRPA and Mountain Addiction engaged with a mediator through the Eastern District Court's Voluntary Dispute Resolution Program. As a result of the mediation session and continued conversations, TRPA, Sheaf, and Mountain Addiction have agreed to the Settlement Agreement in which Sheaff and Mountain Addiction will pay a penalty of \$20,000 to TRPA for the unauthorized tree removal without admission of fault or involvement.

The parties agree that it is mutually beneficial to resolve the matter in this way. Upon approval of this Settlement Agreement and payment of the \$20,000, TRPA agrees to dismiss this case in the District Court. Staff recommends that the Governing Board approve the Settlement Agreement.

Mr. Marshall requests that Ms. Williamson have time to comment as she was the Governing Board member present at the mediation with the parties.

Ms. Williamson agrees that Mr. Sweet's presentation was a good and accurate summary of the facts of this case. In her opinion, this recommendation [from staff] is very reasonable given the facts of the case; the fact that it was a strong circumstantial case but a circumstantial case, nonetheless. After having sat through the mediation it seems like a reasonable outcome.

Mr. Rice comments that the tree cutting was egregious, and the parties showed no responsibility or remorse whatsoever. Since staff has agreed to this settlement agreement, he's willing to go along but feels that this violation is "totally egregious".

No representative for Justin Sheaff or Mountain Addiction was present at the committee meeting.

Mr. Marshall responds to Mr. Rice and agrees that this was an egregious violation. The issue that staff wrestled with was the level of evidence to prove that it was Mountain Addiction and Justin Sheaf who were responsible. The uncertainty comes from there, not from the egregiousness of the conduct. Mr. Marshall assures Mr. Rice that staff appreciates his comments and takes such violations seriously.

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### Committee Comments & Questions

Ms. Novasel thanks Mr. Marshall for his comment. She agrees with the seriousness of this violation and that this settlement is the best way to move forward for all parties.

### Public Comment

None.

### Final Committee Comments

None.

Ms. Novasel made a motion to recommend approval of the settlement agreement as shown on Attachment A.

Ayes: Ms. Novasel, Mr. Rice, Ms. Williamson, Mr. Yeates, Mr. Bruce.

### **Motion carried.**

Presentation can be found at <https://www.trpa.gov/wp-content/uploads/Legal-Committee.pdf>

## IV. GENERAL COUNSEL LITIGATION UPDATE

Mr. Marshall provides the update on the eight pending cases to the Legal Committee.

The oldest case is the challenge by Mr. Gregory Garmong to the cell tower across from Skyland which is now sitting in the Ninth Circuit Court of Appeals in the midst of briefing on the District Court's dismissal of the case on the merits. TRPA will be filing its response brief shortly and then there's one final cross-appellant brief after which the case will be in the Ninth Circuit queue.

Next, there's the Monica Eisenstecken v. TRPA case which is pending in the Eastern District of California. TRPA has filed a Motion to Dismiss a little over a year ago and staff anticipates a Motion to Amend after today's action.

Next, there are three related cases that were authorized by the TRPA Governing Board to file regarding enforcement of mooring provisions of the shoreline code. All violations occurred offshore of Regan Beach in South Lake Tahoe and the cases were filed in the Eastern District of California. Staff is in the process of locating and serving the litigation and will keep you informed. Staff has formally served one party and is working on finding locations for these [other] folks which is turning out to be a bit of a chore, and then serving them with the pleadings.

The next case is Kent Bryan v. TRPA. Mr. Bryan, if you remember, sought a permit for a non-littoral buoy near Homewood. The Governing Board denied his application on appeal and he then sued TRPA in the Eastern District of California. We have answered that complaint and are preparing the administrative record to defend that action. Because the unsuccessful applicant sued TRPA, we are providing the defense for that case in house.

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The final case is Michael Harrosh v. TRPA and the Johannessens. The Johannessens were granted a TRPA pier permit and their neighbors the Harroshes appealed that permit. The Governing Board affirmed issuance of the permit on appeal. Michael Harrosh alleges that the permit was improperly issued because it interferes with the navigability of his pier. That case is on a Motion to Dismiss the hearing for which is this Friday, March 25.

There were no questions from the committee.

V. COMMITTEE MEMBER COMMENTS

None.

VI. PUBLIC INTEREST COMMENTS

None.

VII. ADJOURNMENT

Mr. Yeates moved to adjourn.

Meeting adjourned at 9:27 a.m.

Respectfully Submitted,



Katherine Hangeland  
Paralegal

*The above meeting was recorded in its entirety. Anyone wishing to listen to the recording may find it at <https://www.trpa.gov/meeting-materials/>. In addition, written documents submitted at the meeting are available for review. If you require assistance locating this information, please contact the TRPA at (775) 588-4547 or [virtualmeetinghelp@trpa.gov](mailto:virtualmeetinghelp@trpa.gov).*