

TAHOE REGIONAL PLANNING AGENCY
LEGAL COMMITTEE

TRPA
Zoom

September 28, 2022

Meeting Minutes

CALL TO ORDER AND DETERMINATION OF QUORUM

Vice Chair Ms. Novasel called the meeting to order at 8:16 a.m. on September 28, 2022.

Members present: Ms. Novasel, Ms. Aldean, and Mr. Yeates. (Mr. Hicks arrived at 8:22 a.m.).

Members absent: Ms. Williamson, Mr. Rice.

I. APPROVAL OF AGENDA

Mr. Marshall stated that there were no changes to the agenda.

Ms. Novasel deemed the agenda approved as posted.

II. APPROVAL OF MINUTES

Ms. Novasel asks for approval of minutes from the August 24, 2022 Legal Committee meeting. Mr. Yeates makes the motion to approve the minutes as presented.

Motion carried by voice vote. Ms. Aldean abstained.

III. APPEAL OF PLAN REVISION ERSP2019-0389-01 VERIZON CELL TOWER, 1360 SKI RUN BLVD., SOUTH LAKE TAHOE, CALIFORNIA, ASSESSORS' PARCEL NUMBER (APN) 025-580-007; APPEAL FILE NO. ADMIN2022-0036

Mr. Marshall presents for TRPA staff. [Slide 3] To orient the committee, we're on the South Shore with this cell tower and the committee may remember that this permit was previously appealed to the Governing Board. [Slide 4] is the parcel map where the location of the tower is located next to the parking lot. [Slide 5] is the cell tower which was approved and the matter for appeal here is the plan revision which was applied for by Verizon to drop the foundation mat 6' from 7.5' to 13.5' maximum below surface grade ("bsg"). [Slide 6] is a side-by-side comparison of the plans as approved on the left with the mat foundation a foot or two bsg on the downhill side and the uphill side the maximum excavation depth was 7.5'. The plan revision that Verizon applied for, that was anticipated by condition 3 of the permit, was to drop the foundation an additional 6'. This was a revision to an existing approved plan and the only thing on appeal are the issues that arise from the plan revision itself.

Most of the discussion will take place over the process that the plan revision took. The same report that was utilized to approve the original excavation down to 7.5' is what was used to approve the foundation drop another 6 feet. [Slide 7] This slide shows that reported test bore down to 19' which showed no interception of ground water which is what TRPA staff based their decision on both in the first approval decided by the Hearings Officer and then the appeal

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denied by the Governing Board which permit is now under litigation. It [the report] provided justification that there was no ground water encountered down to 19'. [Slide 8] As a result of the appeal, TRPA staff went out and monitored and did a soil analysis on the side cut of the excavation down to 7.5' which Verizon already had a permit to do. This excavation was a permitted activity not subject to this appeal. This [soils analysis] demonstrated no evidence of ground water and, what's telling here, is that hard bedrock was encountered at 7.5'. [Slide 6] What that means is on the original plans, they're already hitting bedrock at the approved excavation depth. What they had to do was excavate through bedrock to set the foundation 6' lower. There was just no chance of interception of groundwater or interference of groundwater flow.

Talking briefly of TRPA processes, TRPA processed this plan revision just like it processes all other plan revisions and that is, if it can be done at staff level, it's done at staff level. If it happens to trigger one of the bases for which the Code says it must go in front of the Hearings Officer or to the Governing Board, then we do that. This plan revision was just a drop of 6' in excavation which, under Code 2.2.2., part of what is delegated to the Executive Director. The process was followed with regard to public notice; a plan revision like this is not required to have public notice so no rules were violated there.

The other major process issue raised is regarding the process for getting approval for excavation. There are two key processes here. One is the Code section that contains the prohibition for groundwater interference unless you get an exception but if you're not interfering with groundwater, you don't need an exception. The second Code section is whether or not you are exceeding 5' in excavation and, if you are, you need to have a soils hydro report to justify whether or not there will be interference with ground water. The soils hydro report in this case, the one that was utilized in the first approval established that there would be no interception of groundwater.

Mr. Miller presents as the appellant. He states that he doesn't have any prepared remarks because this came as a surprise to him, and he isn't a lawyer. Nonetheless, he has a presentation. He's lived at Lake Tahoe for nearly 30 years and worked at the Regional Water Board for 25 years as one of their Supervisory Chiefs over engineers, geologists, and scientists. He worked a lot in this Basin and also regionally from Oregon down to Los Angeles. He has a lot of regulatory background which is how he approaches this appeal. He's worked with TRPA over many years and was aware of the permitting processes and various requirements. He's been participating in this project for several years now and when he saw that this excavation was approved without, in his view, what was a proper hydrologic/geological soils report and without any analysis of what the groundwater conditions really might be on this beleaguered parcel which is asked so much, he thought it wasn't right and that the process wasn't being followed and putting the cart before the horse. His objection was that this [additional excavation depth] was going to impact groundwater and that there was no evidence to suggest otherwise because the report that was utilized was, as John Marshall showed, simply a bore hole 8" in diameter down to 19' and frankly you can't discern hydrology from that. All you can do is see if there's water present at the time and that's not what the TRPA regulations are aimed at or intended for. They're intended for seasonal groundwater conditions and to identify those indicators in the soil and vegetation and in the hydrology that are going to contribute to the groundwater, and he didn't see any of that being evaluated.

To him, it was kind of a no brainer to say that this wasn't right and that the report was inadequate so he objected, and he was hoping that they would be able to get that information before the excavation occurred but the stay was not granted and so the excavation proceeded.

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To him, that was a violation and he objected but wasn't really heard. Be that as it may it was an opportunity for them to interact a bit about this [project] and how TRPA approached this process. [Slide 13] First he wants to talk about why we're here today because when he appealed the matter, he did it under the TRPA Rules and his expectation was that there would be a hearing next month because that's what the law says. Rather than that, TRPA played fast and loose with the law and pushed the hearing until today. That was a significant hardship on Mr. Miller to advance everything by 30 days. It was an injustice from the standpoint of allowing him and his associates to marshal their information and any experts that they may have wanted to bring in and so forth. The whole thing was just pushed including getting the appeal in on time so that the staff would have enough time to respond and he did provide 16 days in advance of the September hearing even though he cut himself short by a week to do that. The reason that happened is quite significant, it's because TRPA played fast and loose with the rules for the appeal hearing when Eisenstecken appealed back late last year. Rather than going to hearing under the law as required, TRPA postponed it for 60 days. Then Verizon had to come in after that and get their plans together so they were pushing towards the end of the season and when the stay request came in TRPA said we're not going to push this beyond October 15 for Verizon so they shut them [the appellants] down and decided to do whatever they wanted which had no basis in the law.

TRPA needs to follow their processes. Moving to the alleged violations, even with that we didn't get the stay response on time. TRPA's supposed to respond in two days, we didn't hear anything, Verizon made a stay motion, TRPA responded a day later and a day late to say that they're going to go with Verizon's proposal and therefore moved the hearing up. There wasn't very much they could do on their side except go along with it. Mr. Miller's feeling on it was that they didn't need to do any of that, they could have just waited until October 15, Verizon could plan their thing, everybody goes beyond October 15 anyway so it's a roll of the dice, you might be able to do it you might. There was no justification for violating the law in Mr. Miller's view.

Part of the negotiation around moving this hearing up was that they wanted to get some information on the groundwater and they wanted it from an independent, qualified hydrologist/geologist/soils scientist, not just an engineer-in-training Geotech who was under the supervision of some civil engineer. Later the plans were signed by another civil engineer. To him the report was very limited but it was all he had to work with so the idea was before any excavation was done you should go out and have Verizon or an independent investigator hired by someone else but not just TRPA staff sent out there to get the fix in. That was ignored and the excavation proceeded and then John Marshall proposed to send the TRPA staff in and they object to that. They object to the inclusion of the contents of the report in the record but again that was ignored. And the reason they're objecting is that frankly it's kind of irrelevant. It's after the fact. The fact of the matter was TRPA was supposed to do the soils hydro report in advance by a proper qualified expert, TRPA jumped the gun. When the application came in, staff questioned whether they should require a different soils hydro report, a new one because all they did was rubber stamp the old one and send it forward with some new seismic information. There was no answer to that question in the record other than that no they didn't require it. That's highly questionable in Mr. Miller's view.

Mr. Bud Hicks asks Mr. Miller about Rule of Procedure 8.4 listed on his slide about employees not accepting compensation. Mr. Hicks asks what Mr. Miller's basis for that is. Mr. Miller says that his feeling is that the report is supposed to be from an independent agent submitted as part of a complete application and not just sending staff out to take a look at it and give a blessing to it. Mr. Miller states that he's implying that that's a conflict for TRPA staff. Mr. Hicks clarifies because the staff gets paid. Mr. Miller agrees. Mr. Hicks asks that aren't independent

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contractors also paid when they're engaged by TRPA? Because they don't work for free. Mr. Miller wasn't suggesting that they would be paid by TRPA, he was suggesting they would be paid by Verizon. Mr. Hicks asks if that would be a conflict. Mr. Miller says no if Verizon would have prepared a proper soils hydro report with the requisite information that was what they had asked for prior to the excavation.

Mr. Miller continues [Slide 14] stating the Verizon was required to submit a complete application to get a project permit. Every applicant is required to fill out and submit an Environmental Impact Checklist form and that's that environmental documentation for their project from their view and then staff is supposed to review that and determine whether to approve a FONSE (Finding of No Significant Effect), prepare an Environmental Assessment, or to move to an Environmental Impact Statement. In this case there was no IEC (Initial Environmental checklist) submitted. The checkbox on the application checklist was left blank with no explanation and staff bypassed that and did not interrupt that incompleteness. He feels this was a major deficiency because, as identified in his affidavit, there were numerous things that the project could effect that were potentially significant impacts where there was either insufficient data to make a determination and, again, these mainly concern the groundwater and effects on nearby SEZ (Stream Environment Zones) and so forth. These were identified in his affidavit and there was no IEC submitted to verify what the potential impacts might be or even to begin an assessment. That was just skipped and there were a number of other things incomplete in the application and staff moved right ahead to stamp those plans and approve the exception. That was his assessment that TRPA was moving ahead without a proper groundwater report or any environmental assessment. After all we've been through on this project, they were pulling a fast one in his view.

Ms. Novasel gives a time check of about 1 minute and offers Mr. Miller to give a quick synopsis of any remaining points. Mr. Miller moves through slide 15 stating that he's covered that. [Slide 16] Incomplete application stuff, [Slide 17] staff did not compare what was actually required with what was actually required in the Code and Compact against what was in the Rules which was covered in the permit which was some kind of shorthand interpretation of the Rules, [Slide 18] and then concerning the excavation requirements, Code section B wasn't really followed in its entirety and because of that there was no basis to move to an exception under part A. That exception as for health and safety and building above ground structures. There was no basis to even move to granting an exception because the requirements of the section B of that Code were not met with the granting of the approval. [Slide 19] That's what was missing there were no measures included in the project to maintain groundwater flows if they should occur, to avoid adverse impacts to SEZ vegetation or to prevent any groundwater or subsurface water flow from leaving the project area as surface flow. And so that negates consideration of exceptions under A. TRPA's asserting this violation doesn't matter. [Slide 20] Mr. Miller doesn't even want to get into all the public health and safety findings on that basis. There were a lot of bogus findings put forward. [Slide 21] Finally we come to this. In looking at the revisions for the plans, this was the first time he had the opportunity to review the complete and final plans after the exception was granted. In review of that he finds that the project as proposed will result in coverage in excess of what is allowed by somewhere from 49' to 165' depending on which Verizon drawing you examine closely. Staff took a look at his work and apparently didn't understand it and didn't really address the violations so if the project is approved and the appeal is denied and Verizon moves ahead to complete the project as the revised plans show, it's his assertion that the site will be overcovered by as much as 30%.

Ms. Novasel states that now the Permittee will present. Michelle Duarte presents with SAC Wireless on behalf of Verizon Wireless, presenting their response to the appeal of six-foot

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deeper excavation for its Ski Run Boulevard facility in South Lake Tahoe. We appreciate this opportunity to speak again about our project to the TRPA Board. The deeper excavation complies with TRPA regulations and the California Building Code, so we ask the Board to deny the appeal. We emphasize that this project will provide critical wireless coverage to the Heavenly Valley and Bijou Park areas, benefitting residents, visitors and emergency personnel.

Alongside me is Paul Albritton of Mackenzie & Albritton, LLP, who will further respond to the appeal. [Slide 25] To begin, we will review the timeline for this project.

In July 2019, a geotechnical engineer with Terradyne Engineering prepared a report confirming that their on-site investigation found no evidence of groundwater to a depth of 19 feet at the project location. Also, that year, Verizon Wireless filed its permit application with TRPA. In January 2020, the South Lake Tahoe City Council denied an appeal and approved a use permit for the facility. In May 2021, TRPA approved land coverage calculations for the existing site, and in October 2021, the TRPA Hearing Officer approved the permit. In February of this year, Verizon Wireless filed a building permit application with the City of South Lake Tahoe. In March, the TRPA Board denied an appeal of its permit, thereby granting final approval. In April 2022, Terradyne Engineering issued a supplemental report confirming that increasing the excavation depth by 6 feet to 13.5 feet is feasible. On July 28, the City of South Lake Tahoe approved the building permit. On August 2, Verizon Wireless filed a request with TRPA to increase the excavation depth by 6 feet, to 13.5 feet. TRPA Staff approved the deeper excavation on August 5, and approved plan revisions reflecting the deeper excavation on August 17. On August 22, an opponent appealed staff's approval of deeper excavation, and requested a stay of all construction. Verizon Wireless responded to that stay request within 48 hours, as required, and on August 24, agreed to a compromise to stay pouring of concrete until today so the Board can hear the appeal. In the meantime, TRPA sent its soils scientist to the project site on September 1 and 14 to inspect the excavation to 13.5 feet, and she found no evidence of groundwater.

[Slide 26] A condition of approval of the TRPA permit for the site initially allowed excavation to a depth of 7 feet 6 inches, providing that if the final design required deeper excavation, that Verizon Wireless could apply for approval. After consulting with TRPA staff about the process, Verizon Wireless filed its request for 6-foot deeper excavation on August 2, consistent with the condition of approval. Staff approved the deeper excavation in a letter dated August 5. The minor 6-foot increase was reflected in the plans approved and stamped by TRPA on August 17.

[Slide 27] There are two factors relevant to this excavation depth. The California Building Code requirements are based on formulas and site conditions—slope, tower location, mat dimensions and soil properties. Also, geotechnical requirements specify that the mat foundation must be embedded a minimum of five feet below the existing grade elevation, according to the report by Terradyne Engineering. [Slide 28] For these reasons, the excavation for the tower foundation was increased by 6 feet to a depth of 13.5 feet. The California Building Code clearly requires increased depth, and the geotechnical recommendation required a slightly deeper excavation to ensure a safe tower design. We have our engineer, Emilio Valerio-Hernandez, in attendance to answer any questions regarding the excavation. [Slide 29] When Verizon Wireless's excavation reached a depth of 8 feet and hit bedrock on September 1, the TRPA consulting soil scientist, Marchel Munnecke, was on-site to inspect, and she determined that there was no evidence of groundwater. The excavation continued until it reached 13.5 feet, and September 14, Mrs. Munnecke again inspected the site along with TRPA Senior Planner Julie Roll (who had approved the deeper excavation) and TRPA General Counsel John Marshall. Once again, there was no evidence of groundwater intrusion, which is appellant's main concern.

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[Slide 30] Verizon Wireless also asked geotechnical engineers from Krazan & Associates to inspect the excavation area, and on September 20, Krazan issued a report stating that the inferred average groundwater elevation in the area is approximately 127 feet below the excavated area. Krazan concluded that, "There was no evidence of groundwater in the excavation including any evidence of current seepage or dampness in the sidewalls of the excavation." [Slide 31] The appellant also raised the topic of vegetation management of the site. Best Management Practices (or BMPs), are included in the approved plans, which have been carefully followed by Verizon Wireless, and are shown on Pages 7 and 8 of its construction plans. These were implemented before construction started. Prior to construction, a TRPA inspector signed off on Verizon Wireless's BMPs, allowing excavation to commence. Verizon Wireless has complied by following and maintaining the BMPs throughout construction. If the project were to fall out of compliance, TRPA would notify Verizon Wireless what measures would need to be addressed. As you can see in these photos, Verizon Wireless took several vegetation protection measures. For example, trees were wrapped with orange construction fencing along the drip line as shown on the BMPs in the plans. Site fencing and hay rolls were placed to contain any debris.

[Slide 32] Verizon Wireless also followed best management practices for disposal of material. Only large rock is being removed from the Tahoe Basin, as most the excavated soil will be reused as filler after removal of any rocks over 6 inches. The photo in the lower right shows the sifting process, with excavated material passing through equipment that separates larger non-compactable items from usable soil. We emphasize that inspectors from both the City of South Lake Tahoe and TRPA regularly visit the site at each stage. Both have determined that Verizon Wireless's construction practices comply with their regulations. Our Construction Manager Jason Kidd is in attendance to answer any questions about the excavation and construction process to date. To conclude, this project has been through an extensive approval process with the City of South Lake Tahoe, and TRPA has denied all previous appeal attempts by opponents. Three geotechnical investigators have found no evidence of groundwater in the excavation area, confirming that TRPA staff properly approved the deeper excavation. We ask the Board to deny the appeal and allow Verizon Wireless to complete construction of this critical communications infrastructure to benefit the community. [Slide 33]. Our Professional Engineer Emilio Valerio-Hernandez and Construction Manager Jason Kidd are available to answer any questions.

Paul Albritton continues the presentation for Verizon. It should be obvious that there are a dedicated group of opponents to this particular cell tower. Verizon Wireless has been experiencing an overloading of its network. The antennas serving this part of South Lake Tahoe are currently at Harrah's, far away, and we are at high peak areas so they're working hard to bring the network up to provide the service that public safety officials have written letters indicating this is what they need. Mr. Miller has been elevating process over substance and we're concerned that that process was really aimed at delaying our construction past October 15 which would push us out another 7 months before we could excavate so they appreciate the cooperation of TRPA to assist in moving this forward and compromising on a stay to allow Verizon to provide evidence. And, in fact, it is process over evidence. The evidence from the beginning was that the drill rig was unable to go below 19' because they hit bedrock in the original investigations in July 2019. For that reason, Verizon is using a mat foundation instead of a pier foundation which would have gone down about 30'. The evidence clearly was that there was no water then, there was no water when the second hydrologists went through, and now we've got a third set of hydrologists to say that not only is there no groundwater, there's no evidence of groundwater. There's no perching, there's no redox, there's nothing to suggest that this foundation will have any impact on groundwater. The decisions were properly made and the evidence currently shows that this was an appropriate investigation, appropriate foundation

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per California building code and all of the hydrology reports confirmed that. Verizon respects the dedication of the opposition but this project needs to move forward and they request that the Legal Committee denies that appeal.

Ms. Shelly Aldean states that she understands from a financial standpoint why preparing detailed structural drawings may be delayed until the project approval but Verizon must have been aware of the topographical nature of the site and potential need for a deeper footing. She asks why that analysis wasn't done, because this could have been avoided if it were included in the original application.

Mr. Albritton responds that there was a whole combination of soils engineers and structural engineers and power engineers who all work together to come up the specific design but it because apparent earlier in the year that there was an issue with respect to confirming the excavation date. We knew that it needed to be looked at which is why it was included in the conditions of approval for the original permit. The workings of the structural engineers, soils engineers, tower manufacturers, in coming up with the specific depth for the excavation gets down to the pounds of pressure that's on the soil by the mat foundation. Michelle Duarte confirms that they were aware that a deeper excavation may be needed but had to confirm everything with the tower foundation company and soils engineer before using that condition of approval to ask for a deeper excavation.

Ms. Novasel gives Mr. Miller the opportunity to rebut for 5 minutes. Mr. Miller states that Mr. Albritton is saying that they were representing substance over evidence or process over evidence. Mr. Miller disagrees. He would say that he believes the process is important. He has a long track record of doing his best to follow the complex regulatory laws and TRPA's are particularly complex in his view and people are easily tripped up and so he doesn't really have any issue with Verizon in this case and what they did; they simply made an application. His issue is really with TRPA and how they processed that application, not requiring the environmental impact checklist, not requiring a number of other things, and moving ahead to stamp the plans. To him this was all wrong because what we're looking at is a TRPA program that is designed to protect groundwater and has been for decades and was helped to be developed by the soils scientist that submitted a letter on his behalf saying this geotechnical report is inadequate, it does not serve the purpose. So TRPA is going around allowing single bore holes that don't tell anything about groundwater and then moving right ahead on that basis to approve significant impacts on this project and on, it looks like, other projects by Verizon and quite possibly by many other. Mr. Miller is calling into question what is going on with this program because TRPA isn't following their own regulations. The regulations aren't about going out and drilling a borehole that doesn't tell you anything about the actual groundwater conditions. All that tells you is that there was no groundwater present at the time and TRPA's regulations are designed around seasonal impacts. And then Verizon gets up and says they're so in compliance with requirements and as soon as they got their permit and put up their vegetation fence they went right out there and drove their tracked rig outside the fence where it was prohibited and moved the fence against the regulations and permit and created whatever impact that was until Mr. Miller finally identified it and submitted a report to TRPA for which he was thanked and given no further information. So Mr. Miller filed a complaint because what are they [Verizon] doing out here, outside the fence with their tracked excavator. He doesn't agree that the BMPs are being followed. There was another incident which he reported which was not included in the record as he requested where Verizon was out excavating in the right of way of the City. They also disturbed the City right of way with their equipment when they were doing their excursion outside of the fence so Mr. Miller came by one day to take a look at what was going on and they were excavating in the street and they hit a gas line. There was a 4 engine respond from the Fire

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Department, Southwest Gas was called in, the thing was shut down, the neighborhood was evacuated, and again this information was excluded from the record which Mr. Miller doesn't understand. Mr. Miller doesn't understand how TRPA operates and has operated through this whole process. It's been really egregious in his view. He's wondering what is going on here with TRPA bending over backwards and breaking over backwards for Verizon, that's what he's here to interrupt. They're going to keep showing up about these monopines because he can't believe after the information provided on the plastics and the discharge of toxic materials from these monopines that TRPA just moved right on past it. Now the Waterboard is out there attending to TRPA's mess and it's not right. TRPA is going to approve them and the Waterboard is going to go out and clean them up? Mr. Miller apologizes for getting heated but the issues are close to his heart and he just can't believe TRPA would allow this kind of micro-plastic pollution in Lake Tahoe. There is a micro-plastic problem in Tahoe, that's known, and the other thing is that TRPA assumes that the absence of evidence is the evidence that there's no problem, they don't need to apply science or listen to the public, TRPA just moves ahead on behalf of their telecom partners.

Committee Comments & Questions

Ms. Aldean states that she understands Mr. Miller is very passionate about this and appreciates that passion. In his submittal he indicates that this should have been approved as a Class 3 tower which carries a higher engineering safety standard. Hasn't perhaps an element of that higher standard been met with a deeper footing to achieve greater public safety? Mr. Miller says he doesn't believe so because if you read his comments carefully he called attention to the fact that it appears to him that the tower was designed without consideration to snow and ice load. The only response received was that the permit was approved by the City. He doesn't have any assurance that this tower is the least bit safe. He feels that unless that question can be answered, this tower is patently unsafe because it didn't account for the snow and ice loading that Tahoe has. He believes that it's because it was designed by a firm in Arizona and stamped by a civil engineer in California who didn't do due diligence. Then we have a lack of diligence on the part of the city but we also have a lack of diligence on the part of TRPA because again, they're making health and safety findings saying it's all well and great but they never did an Environmental Impact Statement (EIS), they never said what is it that constitutes safety? How many towers can we have before we create an unsafe condition? Mr. Miller states as this wireless industry has crept into our Basin over time we have more and more towers, we have antennas all over the place, and there's never been an EIS done. If TRPA had looked at it they would have noticed that the fire conditions were different. Now we're in an extremely critical fire situation. If the Caldor fire wasn't a wake up, he doesn't know what is. It's incredible to him, these towers do fall, they catch fire from the base, they've got fuel on site, they've got all kinds of things that can go wrong. Much of it has happened during welding or during construction like this pipeline break they had. If it had happened under different circumstances or if it had caused a fire or an explosion we might not be here now. This town might not be here now. That is just ridiculous for a phone call.

Ms. Aldean states that this is a broader discussion than the one we need to have this morning. Obviously we're focused on the fact that Mr. Miller's appeal for a stay was not granted and so the question is, and maybe John Marshall can respond to this, Mr. Miller is calling our process into question and whether we were diligent in following that process.

Mr. Marshall responds to two issues Mr. Miller raised; first the scheduling of the appeal and the second, the IEC. Regarding scheduling, when there is a stay request, within the Rules of Procedure, particularly if the stay is granted to a certain extent, TRPA moves the hearing to the

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next available hearing date, in this case, September. The reason why we didn't get back to Mr. Miller within two days because the second day of the two-day period was a Governing Board day, so TRPA got back to him the next day following to inform him of the partial stay that was in place. About the IEC, there was one prepared for this project. The question is whether they needed a supplemental document for the plan revision. In this case, TRPA determined there was no need for supplemental information because the information that was indicated by the groundwater report was that there was none intercepted down to 19'. Therefore, there was no need to supplement the original IEC and original FONSE from the original project.

Ms. Aldean asks if a bore hole is standard practice in this situation. Mr. Marshall responds that it's site specific. Planners will look at it on a case-by-case basis and determine if additional information needs to be presented. In this case, the Board has already taken action on the permit that was issued and Planner Julie Roll didn't feel that there was any need for supplemental information beyond the bore in this case [for the plan revision].

Ms. Aldean states that Mr. Miller has alleged that TRPA is bending over backwards to accommodate the applicant, obviously we could have approved an excavation exception beyond the October 15 deadline if the stay had been granted. Mr. Marshall agrees that there are grounds for going beyond October 15 but he's not certain they would have qualified if they hadn't commenced excavation in the first place. The extensions are to allow construction to finish up and at the point the stay was requested, no grading had occurred. Mr. Miller states that he had no objection to Verizon excavating to the original approved depth.

Public Comment

Bob from Tahoe for Safe Tech states that Verizon is the largest company in the world and the telecom industry is polluting the Earth. He hopes the Legal Committee knows that there's a plan for 800,000 towers across the United States by 2026. He wants you to each ask the question to yourselves are you ok with polluting the drinking water for 12 million people? They never investigated the water, she [Bridget Cornell] told him that personally. This guy from Verizon, they're a capitalist company, it's all about making money, they're not protecting our environment. Second, this appeal should be upheld solely on the fact that this property is already overbuilt and well beyond allowable coverage. TRPA was put in place to protect our water, Verizon and TRPA staff have failed us and you. You [directed towards Bridget Cornell] told me directly there were no water investigations. You stated, Mr. Albritton, that you guys didn't know these plastics were coming off of the trees, well then how do you replace them every 5 years? How do they replace them every 5 years? He stated that he didn't know this. Here's the facts, this is one of them. It has lead in it and he's sorry about dropping some lead around. He's got bags and bags of this sh*t at his house. This is very unacceptable. They recently discovered these fake monopine cell towers shed extensively; it's illegal, we caught them. He sent the material down himself to Santa Fe Springs to a lab that investigated the AT&T cable that has 3 lbs of lead per foot and is 8 miles long that they're getting ready to take out. He called that lab and called that attorney. He sent this material to that lab and it all has lead in it and you all are polluting our lake and you're oking it. You're so sweet and smiley Mr. Marshall. They've been shedding these toxic materials since installation although you were not made aware of this. They put new material on every 5 years, where does the material go? Everyone knows anything that's dropped in the Basin ends up in the Lake period. You all know this. He personally sent the material, it contains lead, this is your chance to stand up and stop this industrious failed pollution. Save Lake Tahoe. Are you ok with polluting the drinking water for 12 million people?

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Ms. Novasel reminds everyone to stay on topic. This is about the plan revision so asks everyone to keep it on the extra excavation.

Malina Wallace comments that she is a mom and a local. She's been in Tahoe for 20 years raising her kids from Tahoe Parents Nursery School to South Tahoe High School and she doesn't want to live here anymore in this neighborhood because of all the towers that are coming and invading her home. She's speaking on behalf of over 5,000 signatures collected from community members who don't want this tower. TRPA has ignored important studies on cell towers and impacts to human health. The tower also violates the Endangered Species Act by being adjacent to a SEZ that's home to an endangered species of frog. In addition to violating the law, TRPA has failed to listen to the people because it is clear that the community does not want this here. It caters to out of towners, she's lived on Ski Run, she has a business on Ski Run, she streams videos, her kids are on Zoom meetings, they've never had a problem with connection. There's a tower across the street from her house, there's one down the street next to the Black Bear Inn and there's one behind her house at the Whole Foods. Nothing is overloaded, there's not a problem, they've never had a problem. This is for out of towners, she's seen in King's Beach on busy weekends like Fourth of July or whatever when there is a need, mobile towers go up to accommodate but she doesn't see why there has to be this giant plastic tree in front of their homes. The TRPA has ignored important studies and discounted expert advice, and has applied inconsistent reasoning in finding that the tower at Ski Run does not pose any reasonable risk to man or the environment. What risk mitigation measures are necessary and where is the analysis of how this tower will affect the yellow legged frog habitat? This tower is also in direct violation with our local City Ordinance which requires she believes that towers must be placed at least 200ft. from homes. Verizon has already forced local families and animals to flee their homes. How many more people will they harm? Please grant the appeal.

Ben Lebowitz states that he wants to remind everyone that we're still in Federal litigation over this. A judge agreed to uphold the appeal a previous time and even if they erect this under your guise, it still could be torn down and then there could be liable cause for all of you. He'd like to make note of the evidentiary supporting people that come in on behalf of Verizon to convey to you that what they say is accurate. Upon the excavation and the drilling which he has to hear every day for the last month, he went to talk to one of the foremen and he said that he thought the craziest part of this whole thing was that a professional photosimulator said that this tower would be below the tree line. There's not a single tree on that site over 60 feet. This is a 112-foot tower. He [the forman] laughed and told Ben maybe the trees would get that tall if they grew for 30 more years. Ben asks what TRPA will do about Dan Carmichael lying to them in the last appeal. This relates to the excavation because Ben went down and talked to the person installing the facility and was told that there was no way what TRPA was told was correct. He'd also like to note the micro-plastics situation. The clean up crews and volunteers that pick-up trash around Lake Tahoe are commendable. They picked up 1500 pounds of trash after 4th of July last year. This year Ben thinks it was closer to 3000 pounds. They're looking at a massive scale here close to 20,000 to 28,000 pounds around the lake of this micro-plastic stuff that's fallen off and has tested positive for lead annually. Not in total, annually. They have collection videos of them [Verizon] replacing the material on another site. 4 years of not submitting these new excavation plans and with the idea that this would be 30' pile-ons potentially? You would think they would have had 13 feet of excavation in mind from the get.

Molly Armanino comments that she had joined this call for the climate discussion but after hearing so many people passionately speak up to TRPA she also would like to speak up. She hasn't looked at the process or site plans but is a planner and can't believe that an environmental checklist has not been filed for something of a scale like this for a commercial

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property. She doesn't really think this is ok. She doesn't hear people ok with this, she doesn't see how the community benefits from this whatsoever. Clearly this was not investigated or reviewed properly. As a community member she's offended and sad and as a planner she's doesn't view this as a successful project at all and does not support this whatsoever.

Doug Flaherty had his hand raised but was having audio issues and emailed his comment which was distributed to decision makers. Pasted below is his written comment:

I would like to expand on Mr. Miller's comments regarding the TRPA planning and approval process. According to the recent UC Davis State of the Lake Report, the Lake Tahoe Basin is in an environmental free-fall, and out of "Equilibrium" and "Harmony" as required by the Bi-State Compact. Through its malfeasance the TRPA has mismanaged its charge under the Bi-State Compact and failed to adequately monitor, measure and provide substantial project "cumulative impact" data and analyses, since its 2012 Regional Plan update to ensure "equilibrium" and "harmony" within the Tahoe Basin and has failed in its responsibility to protect our cherished Lake Tahoe water clarity. Cumulative impact is the impact on the environment which results from the tyranny of incremental impact of small decisions when added to other past, present, and reasonably foreseeable future actions regardless of what agency) or person undertakes such other actions. Cumulative impacts result from individually minor but collectively significant actions taking place over a period of time. The long-term failure on the part of the TRPA involves the use of a "sham" environmental checklist. This TRPA sham environmental checklist circumvents a process that would otherwise ensure that Lake Tahoe Basin wide cumulative impacts are analyzed. Instead, the TRPA has been on a march of agenda driven increased human capacity, increased growth and relaxation of building regulations, increased parking and transportation projects, human capacity initiatives, including promotion of high-density growth without any real and adequate cumulative impact environmental assessment.

Robert Berg comments that he's one of the attorneys for the plaintiffs in the federal litigation and is just giving public comment here today. He's not involved in the appeal per say. Process is important and it's important for the TRPA to follow its own rules which it's not done here. It's really very concerning Mr. Marshall seems to make up whatever rules suit him at the time which Mr. Berg thinks is wrong and the Legal Committee should hold TRPA Staff to account. When they had their initial issue with the appeal in March, it was convenient for Mr. Marshall to delay the appeal for 2 months while they worked out an arrangement with respect to the monopine micro-plastics issue with Verizon, and here he accelerates the appeal so Verizon can dig its big hole before the snow season and it's just not appropriate to play with the rules like that. One important thing they've discovered during the earlier appeal that Mr. Berg tried to get information on what amount of material Verizon was going to be using for the monopine branches and needles and Verizon never told anyone what materials they were going to use and how many branches and what poundage. For the first time in the application here for the larger dig, they provided new specs and you can actually see the branch layout and you can calculate the poundage of the material. They're going to be putting 10,000 pounds of PVC plastic and fiberglass reinforced plastic on this monopine tower. As we showed you earlier in March, this stuff gets ripped off in the harsh environment in Tahoe very quickly and creates a debris field around the base and far afield because particularly with the PVC pine needles this stuff flies all over the place and becomes micro-plastics and is going to wind up in the lake as others have said. So you have 10,000 pounds of material in this single monopine tower. Here you have an opportunity to stop this. Now we have Lahontan Waterboard investigating this waste discharge of lead-containing micro-plastics. You have an opportunity with this appeal to stop this project. It's your last opportunity to do so, if not, we're in federal litigation, hopefully the court will find our way. If they [Verizon] build this tower, it can come down, and that's what we'll ask the court to do. This is your last opportunity to do the right thing.

Final Committee Comments

Ms. Aldean states again that the Legal Committee is not here to decide on the larger project, merely on the plan revision request by Verizon to increase the excavation depth for safety reasons and she thinks there are adequate reasons for that excavation to be deepened in order to ensure the stability and integrity of this tower. It does not speak to the larger issue of whether or not cell towers are appropriate or safe that's something being currently litigated.

Mr. Hicks concurs with Ms. Aldean's analysis. We're not looking at these bigger questions today that's been addressed already by the board when we gave the original permit which is the subject of the litigation. The issue is raised and the parties are at it before the federal court this is just a matter of the depth which is a safety issue. Mr. Hicks thinks that by going deeper in his layman's perspective, they get a greater degree of safety for the already approved tower. He thinks the appeal should be recommended for denial.

Mr. Yeates states that the most troubling thing is the criticism of TRPA's process. We've listened to TRPA General Counsel properly but we've given the appearance that we bend over backwards for the permittee. We had a prior permit that recognized there was possibility of deeper excavation which is what happened. He can appreciate people's concerns about further environmental review but that had been previously evaluated. He doesn't find any issues with the process.

Mr. Yeates made a motion to recommend denial the appeal.

Mr. Marshall asked Mr. Yeates to discuss his prior recusal. Mr. Yeates states that he recused himself from the hearing of the prior appeal because the Yeates Family Trust had investment in Verizon. Since he no longer has any investment in Verizon so there's no longer a need to recuse.

Ms. Novasel agrees that this conversation is about the excavation only for the safety of the tower. The other concerns have already been addressed with the previous appeal.

Ayes: Ms. Aldean, Ms. Novasel, and Mr. Yeates.

Motion carried.

Presentation can be found at <https://www.trpa.gov/wp-content/uploads/Agenda-Item-No.-VIII.A-Appeal-of-Plan-Revision-Verizon-Cell-Tower-1.pdf>.

IV. CLOSED SESSION WITH COUNSEL TO DISCUSS EXISTING AND POTENTIAL LITIGATION

Ms. Aldean made a motion to move into closed session.

Motion carried by unanimous voice vote.

V. POTENTIAL DIRECTION REGARDING AGENDA ITEM NO. 5

No direction.

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VI. COMMITTEE MEMBER COMMENTS

None.

VII. PUBLIC INTEREST COMMENTS

None.

VIII. ADJOURNMENT

Mr. Yeates moved to adjourn.

Meeting adjourned at 9:28 a.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "K. Huston", with a long horizontal stroke extending to the right.

Katherine Huston
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.