

**From:** Gregg Lien <[lakelaw@sierratahoe.net](mailto:lakelaw@sierratahoe.net)>

**Subject:** Item VIII B, TRPA Governing Board Hearing, Verizon Monopine, Voting Requirements

**Date:** March 21, 2022 at 4:10:30 PM PDT

**To:** John Marshall <[jmarshall@trpa.org](mailto:jmarshall@trpa.org)>

**Cc:** [mbrucetrpa@gmail.com](mailto:mbrucetrpa@gmail.com), julian juliangresser <[juliangresser77@gmail.com](mailto:juliangresser77@gmail.com)>, Robert Berg <[robertbergesq@aol.com](mailto:robertbergesq@aol.com)>, Ben Levi <[ben@dialogue.org](mailto:ben@dialogue.org)>, David Jinkens <[djinkens@charter.net](mailto:djinkens@charter.net)>

Hi John,

In your staff report, you attempt to explain your view of the voting requirements to modify the action by the Hearings Officer, and to uphold our appeal. Your staff report says:

"To adopt the findings and modify the permit, five affirmative votes from California and nine votes overall are required. To deny the appeal, the Governing Board should vote "no". The motion to grant the appeal will fail unless it receives five affirmative votes from California and nine votes overall." (Staff Report, Page 1)

In the first sentence you accurately state the requirements to approve a project under the clear voting requirements of the Compact (Article III(g)(2)), which requires the five and nine supermajority. Implicit in the first sentence is the recognition that this matter is before the TRPA Board as a "project", and therefore that this tower has the potential to have a significant affect ion the environment. Then, in the second sentence, with all due respect, you completely ignore the Compact and turn the voting requirements on their head, to require a supermajority to "grant the appeal". Again, as we have discussed before, and have amply put you on notice of, we have a right to appeal which has already been duly accepted and now the project itself must be voted up or down based upon the Compact's requirements. ***The supermajority was intended to place a high burden on the applicant to show there would NOT be a significant effect on the environment.***

In essence, the choice you frame for the Board is not between two options, but three. Simply stated, those three options eviscerate the Board's authority and empower the staff to collude with the applicant to "bullet proof" a project currently in litigation that never should have even gotten out of the gate without full environmental review.

The only way to view the choices before the Board is as follows:

- 1.) To adopt your misleading and at times flatly inaccurate findings, adopt a patently ineffective condition of approval, all to improve your legal position in close coordination with the applicant.
- 2.) To "grant the appeal" based upon the five and nine supermajority (as a practical matter, almost an impossibility)
- 3.) If neither motion passes, then the action of the Hearings Officer stands, which I think we can all agree ignores some of the key impacts that have been raised, and would result in more negative impacts on the environment, and which also had little in the way of precise findings and little substantial evidence.

This is hardly an opportunity for the Board to do their job, which is to question everything in the interests of the protection of Lake Tahoe, and to set policy within the context of a project approval if the staff refuses to do its job to accomplish the comprehensive planning and studies required to properly regulate this entirely new class of technological infrastructure. (As an aside, I think this is the first time in 40 years TRPA has been willfully blind to a potentially serious impact from a new technology, or product, or action. For example, there was almost an immediate moratorium when two-stroke jet skis appeared on the Lake in large numbers.) I'm sure the long-time members of your Board will recall when the Board really dictated policy to the staff, and took a more activist role. There were divergent views, and active debates, in an attempt to find the necessary votes. There were strong property rights advocates, strong voices for the environment, and members who were adept at finding intelligent middle ground. This was all driven by the need to meet the voting requirements of the Compact. Here, the staff has cleverly removed the Board's impetus to closely examine the project because they simply are not given the option. For many decades, the Board would struggle to find consensus because otherwise a project would be denied. Here, this project is essentially treated as "approved" and the downside of inaction is worse, arguably, than the staff's "Door Number One" choice, which gives little opportunity for the Board to maneuver. Shouldn't the Board be looking at project alternatives that reduce fire danger, microplastics, visual impacts, and numerous other environmental impacts through the use of fiber-optics and other solutions that provide service without the negative impacts of a ten story high plastic eyesore in the most visually sensitive area in all of Tahoe?

It is in this context that we strongly object as a matter of law to your interpretation of the voting requirements under a variety of theories which we will expound upon at the appropriate time. In summary, however, your interpretation is at variance with the Compact, it's intent, and clashes with a host of ancillary legal requirements. Your Board must be allowed to function as it was intended. This is not legally permissible. Best, Gregg

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**From:** Al Miller <[syngineer1@gmail.com](mailto:syngineer1@gmail.com)>  
**Sent:** Monday, March 21, 2022 11:00:32 PM  
**To:** John Marshall <[jmarshall@trpa.gov](mailto:jmarshall@trpa.gov)>; Bridget Cornell <[bcornell@trpa.gov](mailto:bcornell@trpa.gov)>  
**Subject:** Opposing Verizon Cell Tower, Agenda Item VIII B, Uphold the Appeal

I am requesting the TRPA Governing Board uphold the Appeal based on increased wildfire risk due to a tower fire such as may happen due to malfunction, welding, and other causes such as interactions with birds. Please include these comments and information in the record. The risk associated with fires from this proposed Verizon macro tower, and other cellular facilities already approved by TRPA and built, threaten all the values, all the investments and man-power put into the restoration and preservation of Lake Tahoe. The Staff Report says, in relevant part,

“ . . . 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. . . (p. 308)”

It is clear that TRPA is unaware of quite a number of things it could be aware of, but chooses to ignore. The news reports are clear, towers can and do catch fire. Whether they cause a "forest fire" or a fire within the urban areas at Lake Tahoe that could lead to a conflagration that could devastate the communities and forests of Lake Tahoe is an irrelevant technicality. What follows is a compilation of reports on how **Verizon** cellular facilities contributed to a disastrous forest/wildland fire in 2006, and additional reports on fires specifically associated with **Verizon** wireless towers, culled from a list of over 30 tower fires between 2006, and 2021, already provided in the record of this matter (and ignored). See <https://www.ourwebofinconvenienttruths.com/fires-and-collapses/#fires>. Notably, many news reports of tower fires do not list the owner/service provider. This is a brief sampling demonstrating the fire risks associated with cellular towers, which appear to be increasing from the increasing frequency of news reports of tower-associated fires. Links to articles are followed by a summary.

<https://archive.kpcc.org/blogs/environment/2012/09/13/9969/sprint-verizon-t-sign-12-million-settlement-over-2/>

October 2007

### **Sprint, Verizon, AT&T sign \$12 million settlement over 2007 Malibu Canyon fire**

Molly Peterson | September 13, 2012

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California utility regulators have settled a dispute with three telecommunication companies over responsibility for a wildfire in Malibu five years ago.

When Santa Ana winds swept through Malibu Canyon in October of 2007, they knocked over three utility poles. Those poles sparked a fire that burned nearly 4,000 square acres. It destroyed 14 structures and three dozen cars.

Cell phone companies had antennas on the poles, or shared pole ownership with other telecommunication companies. The California Public Utilities Commission investigated whether these five companies contributed to the fire by unsafely mounting equipment there.

The settlement just announced resolves liability for three companies: Sprint, Verizon, and AT&T. Together they'll pay \$12 million in equal shares. About \$7 million will go to the state's general fund and the rest goes into a new utility pole inspection fund.

The Public Utilities Commission is still investigating two more companies, Southern California Edison and NextG. Regulators say the settlement can help deter other utilities that maintain electronic equipment in wildland or fire-prone areas.

<https://aglmediagroup.com/cell-tower-fire-causes-structural-damage/>

11/25/2020 (excerpted)

A 200-foot cell tower in Lapeer County, Michigan, owned by American Tower, suffered an interior electrical fire earlier this week, according to a report in the County Press, causing damage to the integrity of the structure.

The newspaper reported that flames could be seen shooting from the top of the tower at nighttime, while the base of the was so hot that the metal glowed orange and pink. Lapeer Fire & Rescue and Elba Township Fire Dept. firefighters were dispatched to the fire just past 9 p.m.

High winds were forecast for the area the next day. Fears that the tower would collapse onto nearby powerlines were not realized, but the self-supported structure did list to the side. Tenants on the tower — AT&T, **Verizon** and T-Mobile — believe the tower will need to be dismantled, according reports.

[https://www.greenevillesun.com/xml/nitf/flames-damage-verizon-wireless-tower/article\\_1619f00e-5383-530a-a69e-0dbd2acc3c6a.html](https://www.greenevillesun.com/xml/nitf/flames-damage-verizon-wireless-tower/article_1619f00e-5383-530a-a69e-0dbd2acc3c6a.html)

11/4/2014 (excerpted)

A fire that started about 2:30 p.m. Monday damaged the top section of a cellphone tower at 4882 Baileyton Road, sheriff's Deputy Randy Christy said in a report.

The tower, owned by **Verizon Wireless**, was being worked on by contractors from MWT Telecommunications, of Nephi, Utah.

Site foreman Alex Knight told deputies that workers were welding on the tower and heard "two loud noises," the report said.

"Mr. Knight stated he looked up and saw flames and a lot of smoke," the report said.

All power to the tower was cut off by Greeneville Light & Power System.

The United Volunteer Fire Department responded to the fire with one truck and three firefighters, fire Chief Brad Ball said.

Ball said that a coaxial cable caught on fire as welders worked.

The fire was up too high on the tower for United firefighters to extinguish, Ball said.

<https://lasvegassun.com/news/2013/feb/04/cell-tower-fire-closes-us-95-exit-ramp-jones-boule/>

2/2/2013 (excerpted)

A fire on a **Verizon Communications** Inc. cell phone tower has forced authorities to shut down the U.S. 95 exit and on-ramps to Jones Boulevard.

The fire started about 11:30 a.m. when welders were working to reinforce the structure with additional metal plates, Las Vegas Fire & Rescue spokesman Tim Szymanski said.

Szymanski said the ramps were closed because the tower is leaning toward NV Energy power lines.

<https://www.kitsapdailynews.com/news/osprey-nest-electrical-problem-sparked-poulsbo-cell-tower-fire/>

6/21/2011 (excerpted)

## **Osprey nest, electrical problem sparked Poulsbo cell tower fire**

POULSBO — An osprey nest and an electrical malfunction ignited the cell phone tower fire that closed down State Route 305 for 12 hours Monday in the Lemolo area. Kitsap County Deputy Fire Marshal Tina Turner said an electrical malfunction at a lighted beacon on top of the 150-foot tower caught the bird's nest on fire before 4 a.m. Monday. Turner said the birds likely damaged the beacon or its 110-volt power wire while building their nest, contributing to the fire.

The tower leaned precariously, raising concern it could fall across the highway. The state Department of Transportation closed both lanes of SR 305 and detoured traffic through Lemolo. **Verizon, which operates the tower jointly with AT&T**, dispatched a crane company to dismantle the tower. The crane lowered the tower to the ground at about 4 p.m. and the highway was reopened.

The ospreys remained in the area for the remainder of the day, circling their former nest site. One bird was missing a large section of feathers on its right wing, apparently burned away during the fire. Witnesses said the ospreys began bringing new sticks to the tower shortly after the fire subsided.

Ospreys are protected under the federal Migratory Bird Treaty Act and state law. State Department of Fish and Wildlife Biologist Jeff Skriletz told the Herald in April that companies can modify the nests outside of the nesting season, which lasts through September, but modifications require state approval and careful oversight. In some cases the state has allowed property owners to remove a nest while building an alternative nesting platform nearby.

“It’s getting to be a real issue,” Skriletz said of ospreys nesting on cell towers. “We still need to work out a statewide approach

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March 22, 2022

**BY E-MAIL**

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

**Re: Appellants' Reply to Appeal File No. ERSP2019-0389**  
**Telecommunications Facility, 1360 Ski Run Boulevard, South Lake Tahoe**  
**Governing Board Agenda: March 23, 2022**

Dear Board Members:

We are counsel for Appellants, and write to respond to the March 4, 2022 and March 14, 2022 letters of Verizon Wireless ("Verizon") and the March 16, 2022 Staff Report ("Staff Report"), which oppose our appeal.

**TRPA Lacks Jurisdiction to Issue The Permit**

As a threshold matter, TRPA lacks jurisdiction to issue the permit because Verizon has allowed the underlying South Lake Tahoe City Special Use Permit for the construction and operation of the proposed monopine cell tower to lapse. Without a current Special Use Permit from the City of South Lake Tahoe for this tower in place, TRPA cannot issue its own permit. The Special Use Permit issued by the City of South Lake Tower was provided for a one year period only, expiring at the end of that period if not "utilized." It was a *USE IT OR LOSE IT* permit. Verizon did nothing at all to advance this project for over one year after receiving the Special Use Permit from the City of South Lake Tahoe, and by its express terms, the Special Use Permit has lapsed. Appellants presented this argument to the Hearings Officer on October 14, 2021 (See Videotape of hearing at 1:02.12 to 1:04.22), but she implicitly rejected it by granting the TRPA permit without any discussion of this threshold jurisdictional issue.

The facts, however, are clear, and demonstrate that Verizon failed to "use" the City permit during the one year period post-issuance, and the City permit expired on or about

January 14, 2021. A brief chronology of Verizon's actions (and inaction) in support of both permit applications follows:

On or about March 22, 2019, Verizon filed a General Planning Application for a major design review and a special use permit with the City of South Lake Tahoe Development Services Department, Planning Division, to erect a 112-foot tall monopine cell tower on property owned by Guillian Nel at 1360 Ski Run Boulevard in the City of South Lake Tahoe. The application was assigned File #19-026 by the City of South Lake Tahoe Planning Division.

On June 13, 2019, the City of South Lake Tahoe Planning Commission held a public hearing to address the Verizon Wireless application for the special use permit at 1360 Ski Run Boulevard. The Planning Commission approved the Special Use Permit, by a 3-1 vote, based on the staff report and required findings, and subject to the Conditions of Approval specified in the City Permit.

On or about June 25, 2019, the City of South Lake Tahoe issued the special use permit. The special use permit included as a general condition the following: *"This Special Use Permit shall expire and become null and void one year after the date of granting, unless such issuance is utilized prior to the date of expiration."* On or about June 28, 2019, Verizon Wireless accepted the conditions set forth in the Special Use Permit.

On June 27, 2019, Ms. Eisenstecken filed an appeal of the Planning Commission decision approving the Special Use Permit. Pursuant to the South Lake Tahoe City Code, appeals of decisions of the Planning Commission are heard by the South Lake Tahoe City Council.

On or about August 6, 2019, the South Lake Tahoe City Council was scheduled to hear Ms. Eisenstecken's appeal of the June 13, 2019 decision of the Planning Commission approving the Special Use Permit. Many of Ms. Eisenstecken's neighbors submitted written comments to the Council objecting to a cell tower on a variety of grounds, including aesthetics, diminution of property values, health impacts, and inappropriateness in a residential neighborhood.

At the Council meeting, the appeal was postponed until September 3, 2019.

Pursuant to a continuing series of agreements among the parties and tolling agreements between Verizon Wireless and the City of South Lake Tahoe, the appeal of the Planning Commission decision granting the Special Use Permit was re-scheduled for January 14, 2020. During the period between August 6, 2019 and January 6, 2020, more than 3,800 pages of documents and comments were submitted to the City Council by opponents of the cell tower. These documents and comments were made part of the TRPA record presented to the Hearings Officer.

On January 14, 2020, the South Lake Tahoe City Council conducted its hearing on Ms. Eisenstecken's appeal. Following a nearly three-hour long hearing and deliberation, the City Council voted 3-2 to deny the appeal and uphold the Special Use Permit, adding a condition

that Verizon Wireless permit other carriers to co-locate antennas on the monopine. Based upon said vote, the City Council adopted Resolution 2020-004, denying the Appeal brought forth by Monica Eisenstecken and upholding the Planning Commission approval of the Special Use Permit for Verizon Wireless, File #19-026.

Consequently, the City Council issued the Special Use Permit to Verizon Wireless for the monopine cell tower on January 14, 2020, imposing the additional condition that Verizon Wireless agree to co-locate other carriers' antennas on the tower. The Special Use Permit issued by the South Lake Tahoe City Council to Verizon Wireless on January 14, 2020 contains an "Addendum to Special Use Permit," "1360 Ski Run," "File 19-026." The Addendum provides as follows: "The Special Use Permit issued on June 25, 2019 and accepted by Verizon on June 28, 2019 is amended to incorporate the City Council decision of January 14, 2020 to deny the appeal and uphold the Planning Commission approval of the Special Use Permit for Verizon Wireless, File #19-026 (Resolution 20-004)."

Below the permittee's acceptance paragraph is a line for the signature of the owner or authorized representative and the date. Scott Stewart, Director of Real Estate/N. Cal./N. Nev. signed the permittee's acceptance on behalf of Verizon Wireless on January 24, 2020.

**Verizon Wireless Allowed its Special Use Permit Issued by the South Lake Tahoe City Council to Expire on or about January 14, 2021.**

Condition 3 to Special Use Permit File #19-026, 1360 Ski Run Boulevard, provides: "This Special Use Permit shall expire and become null and void one year after the date of granting, unless such variance is utilized prior to the date of expiration."

Condition 5 to this Special Use Permit provides: "This Special Use Permit shall become effective and will be issued no sooner than five business days after the date of the granting of the Special Use Permit. If prior to the expiration of such five-day period an appeal is filed, the Special Use Permit shall not be issued until the granting of the variance is affirmed on appeal (SLTCC §6.55.640 H)."

This Special Use Permit was issued by the Planning Commission on June 25, 2019, and was accepted by Verizon Wireless on June 28, 2019. However, Ms. Eisenstecken timely appealed the granting of the Special Use Permit on June 27, 2019, well within the five-day appeal period. The granting of the variance was finally affirmed on appeal on January 14, 2020.

Pursuant to Condition 5 to the Special Use Permit and SLTCC §6.55.640 H, the Special Use Permit was issued on January 14, 2020.

In order for this Special Use Permit to remain valid, Verizon Wireless was required to "utilize" its variance within one year – otherwise, it "shall expire and become null and void one year after the date of granting."

Under California law, land use and zoning statutes often provide that variances and/or permits automatically expire at one year unless used during that one-year period. The purpose of the one-year automatic expiration is to prevent reserving the use of land for future purposes when one has no present intention to commence upon the permitted use. Although a permittee need not comply with every condition in the use permit in order to avoid expiration of the permit after one year, *the permittee must take some affirmative, good faith action in employing the permit within that one-year period.*

This is black letter law in California, perhaps best articulated in the California Court of Appeals decision in *Upton v. Gray*, 269 Cal. App. 2d 352 (1<sup>st</sup> App. Dist., Division 1 1969). The holding has been cited numerous times since, including in *Community Development Commission of Mendocino County v. City of Fort Bragg*, 204 Cal. App. 3d 1124 (1<sup>st</sup> App. Dist., Div. 3, 1988), and in *Morgan v. County of San Diego*, 19 Cal. App. 3d 636 (4<sup>th</sup> App. Dist., Div. 1, 1971).

This “due diligence” construction of “utilize,” besides being required under *Upton v. Gray*, is fully consistent with TRPA practice. The TRPA’s Code of Ordinances sets a strict three-year expiration period for TRPA approvals, and imposes a “due diligence” requirement literally set in concrete. That’s set forth in Code Section 2.2.4 and defines commencement of construction as “the pouring of concrete for a foundation, or work of a similar nature upon the permitted structure. Commencement of construction does not include grading, plan preparation, installation of utilities or landscaping.”

Although Verizon may have transmitted a copy of the Special Use permit to TRPA within the one-year period following its issuance, the mere transmittal of a copy of a permit does not meet the legal test in California for “utilizing” a permit for the purpose of avoiding its expiration under *Upton v. Gray*. Otherwise, a Special Permit holder can reserve the use of land intended for a specific purpose almost indefinitely without having to diligently pursue all the steps necessary to complete the project. That’s exactly the sin Verizon has committed here. For 1 ½ years after it received the Special Use Permit from the City of South Lake Tahoe, following a tortuous battle with residents, including Ms. Eisenstecken and Mr. Benedict, Verizon did nothing at all besides forwarding the permit to TRPA. Verizon’s inaction disrupted the lives of neighboring residents, creating great anxiety and uncertainty as to the prospects of an unwanted cell tower rising in their midst. But Verizon’s failure to utilize the permit during the one-year period following its issuance means the permit has expired and is a nullity.

With respect to Special Use Permit File #19-026, 1360 Ski Run Boulevard, issued to Verizon Wireless on January 14, 2020, Verizon Wireless was required to “utilize” its variance by January 14, 2021. *Yet nothing in the public record shows any activity at all by Verizon Wireless to move forward with its proposed 112-foot tall monopine cell tower project at 1360 Ski Run Boulevard within that one-year period.* Once Verizon Wireless obtained its special use permit for this facility, its next step procedurally would have been to move forward with its application for a necessary permit from TRPA. *However, a search of TRPA’s online database for 1360 Ski Run Boulevard reveals zero activity for the one-year period ending January 14, 2021.*

More specifically, the TRPA file for this permit application shows the following: on or about March 22, 2019, Verizon Wireless filed an incomplete application to TRPA for a TRPA permit to erect a 112-foot tall monopine cell tower on property owned by Nel at 1360 Ski Run Blvd. in the City of South Lake Tahoe (“the Verizon tower project”). TRPA assigned TRPA File # ERSP 2019-0389 1360 Ski Run Blvd. as the project file identification. The initial materials filed by Verizon Wireless as part of this incomplete application included, among other things, several site plans relating to the proposed Verizon Wireless monopine cell tower, along with plans relating to a project proposed by AT&T several years earlier for a monopine cell tower on the same land parcel which project AT&T subsequently abandoned. Verizon Wireless provided some answers to questions on the application and left others blank.

On or about May 20, 2019, Brandy McMahon, local government coordinator for TRPA, emailed Joseph Sharp, the site specialist for Verizon Wireless who filed the application, advising him that she had completed a preliminary review of the Verizon Wireless application on behalf of Theresa Avance, the TRPA Senior Planner who was assigned to the project. Ms. McMahon identified numerous items that Verizon Wireless needed to address or submit before its application could be processed. Verizon Wireless had to prepare a notice program for affected landowners and the public, submit a RF study, provide coverage maps to document any purported “gap” in coverage, substantiate the height required for the tower, and address tree removal, best management practices, and land/lot coverage.

On or about June 3, 2019, Ms. Avance told Mr. Sharp to submit a soils hydrology application. Verizon Wireless responded to these requests over the next few months, and submitted certain information to the TRPA file, including revised site plans dated June 26, 2019. On or about August 14, 2019, Verizon Wireless submitted the soils hydrology assessment requested by TRPA’s Ms. Avance. On or about August 27, 2019, Julie Roll, a TRPA Senior Planner, wrote Nel, informing him that TRPA staff had reviewed the Verizon Wireless hydrology scoping report application submitted in connection with the cell tower and accessory building application, and determined that the proposed excavation would not likely be impacted by the water table. Therefore, TRPA issued a soil hydrologic approval waiver. Neither Nel nor Verizon Wireless appear to have taken any steps at all since August 14, 2019 to move forward with the incomplete TRPA permit application, even after Nel was sent the August 27, 2019 letter.

And as discussed above, the Special Use Permit was not issued until January 14, 2020, a full five months after Verizon Wireless ceased all activity towards completing its open application with the TRPA for a permit to construct and operate the very same monopine cell tower for which the City of South Lake Tahoe granted its Special Use Permit on January 14, 2020.

Verizon Wireless failed to “utilize” its variance granted by the Special Use Permit File #19-026, 1360 Ski Run Boulevard, issued to Verizon Wireless on January 14, 2020. Verizon Wireless was required to “utilize” its variance by January 14, 2021 or else, under the express terms of the Special Use Permit, the variance would expire. Verizon Wireless only began pursuing steps to complete its TRPA permit application several months after the January 14,

2021 expiration date of the South Lake Tahoe City Special Use Permit. Because Verizon Wireless failed to utilize its variance during the one-year period after the City Council granted the variance, said variance has expired and Special Use Permit #19-026, 1360 Ski Run Boulevard, has been rendered null and void.

The legal and practical consequences of voiding Special Use Permit #19-026, 1360 Ski Run Boulevard, are monumental. Verizon Wireless must now go back to square one with the City of South Lake Tahoe and apply anew for a special use permit from the Planning Commission. But now, the City's newly-adopted wireless communications facility zoning ordinance will control the permitting process and provide the legal framework for consideration of the application. Under the new zoning law, Verizon Wireless will face an extremely difficult burden to overcome in order to obtain a special use permit for the cell tower in this residential neighborhood. In any event, TRPA cannot at this time consider the Verizon application for the TRPA permit for the monopine cell tower at 1360 Ski Run Boulevard because the application is incomplete in that no valid City of South Lake Tahoe Special Use permit for said facility is in effect, which is a precondition for a complete application and TRPA's consideration of same. The Appeal must be granted on this basis alone.

**Verizon's Monopine is a Microplastic "Time Bomb" Which will  
Disperse Tons of Toxic Microplastic Wastes into Stormwater Catchments  
and Waterways and then into Nearby Lake Tahoe**

Verizon describes its proposed cell tower at 1360 Ski Run Boulevard as "a 112-foot tower camouflaged as a pine tree. The antennas will be concealed within faux foliage and branches, and branches above and beyond the antennas, providing a realistic tapered crown. Antennas will be covered with pine needle socks for further concealment." See Verizon's March 4 Letter at 1-2. "The tower will be designed to resemble a pine tree with a tapered form, ample branch density and bark cladding to achieve a realistic appearance." *Id.* at 2.

In its latest submission, a March 14, 2022 letter from Verizon to the Governing Board ("Verizon's March 14 Letter"), Verizon submits a "Photosimulation Package" which Verizon absurdly contends confirms that "the monopine will pose little visual impact where placed among established evergreen trees on the subject property. As seen from multiple distant vantage points, the monopine will not be visible at all."

Of course, any reasonable person looking at Proposed Photos 2, 3, 4, 5, and 7 of the Photosimulation Package -- the photosimulation of the monopine *in situs* -- will immediately recognize that this is a *fake pine tree*, with an unnaturally shaped, massively-rounded crown, rather than the normal pointed pyramid-shaped top of a real, natural pine tree. With respect to microplastic pollution, these Proposed Photos demonstrate the massive quantities of faux PVC branches and PVC pine needles that will adorn Verizon's metallurgical monstrosity. Proposed Photo 2 shows scores of faux PVC branches, each laden with thousands of faux PVC pine needles, just waiting to break off of the monopine in the next major windstorm or snowstorm, and thereafter, fly down into a widely-dispersed debris field below the tower.

In our Statement of Appeal, at pages 10-20, we explain at considerable length that Verizon's proposed monopine presents a toxic microplastic time bomb that will quickly detonate and discharge prodigious quantities of microplastic PVC detritus over a wide dispersal zone surrounding the tower site at 1360 Ski Run Boulevard. The microplastic PVC debris will inevitably find its way into the adjacent Bijou Park Creek drainage basin and into the Ski Run Boulevard stormwater collection system, before discharging into nearby Lake Tahoe as microplastic PVC pollution.

If "a picture is worth a thousand words," then the short video we attached to our Statement of Appeal at page 16, footnote 10 is worth millions. See [link](#). This four minute, 38 second-long video was filmed by long-time South Lake Tahoe resident Robert Aaron on November 4, 2021 at the site of a New Cingular Wireless (AT&T) monopine cell tower located at 1857 Hekpa Drive next to Pioneer Drive at Washoan Boulevard. AT&T's 30.8 meter-tall monopine is extremely similar to Verizon's proposed monopine at 1360 Ski Run Boulevard. AT&T's monopine cell tower was built in or about 2002, and AT&T apparently replaced the existing equipment with new equipment in or about 2018. See TRPA Record QEXE 2018-0155. For some reason, TRPA does not allow the public access to the records or application for this AT&T cell tower, and does not provide any explanation for why these records are being withheld from the public. See <https://aaweb.trpa.org/CitizenAccess/Cap/CapDetail.aspx?Module=Building&TabName=Building&agencyCode=TRPA&capID1=18HIS&capID2=00000&capID3=00656>. Specifically, TRPA has blocked from public viewing the site plans for the 2018 replacement project, but the 2002 site plans remain available for public access. See <https://parcels.laketahoeinfo.org/AccelaCAPRecord/Detail/20021335STD>. The 2002 site plans show that AT&T intended to construct a 95 foot-tall monopine cell tower, with the branches beginning at the 40-foot height level above ground. The site plans state: "BRANCH DISPERSION: HEAVY COUNT." They further state: "EXACT TREE AND BRANCH DESIGN BY MONOPOLE SUPPLIER." We assume that AT&T replaced the original 2002 era monopine concealment faux branches and pine needles with new faux branches and pine needles at least one or more times since construction, and did so again when AT&T replaced its equipment after receiving TRPA's permit in 2018.

On November 4, 2021, Mr. Aaron, appellant Monica Eisenstecken, and her friend, Laura, went to the area surrounding the base of AT&T's monopine at 1857 Hekpa Drive, and found an enormous debris field comprised of many pounds of fallen PVC plastic faux pine branches, many with faux PVC pine needles attached. Clumps of faux PVC pine needles were strewn widely around the debris field, with vast numbers of individual whole and partial PVC pine needles scattered about, often interspersed with whatever natural vegetation is in the area. The investigators demonstrate in the video the extreme brittleness of the PVC pine needles. Mr. Aaron shows how easily the PVC pine needles snap into tiny pieces.

The 1857 Hekpa Drive site is a relatively protected site located at the base of the mountains not far from Lake Tahoe, and it is less exposed than the 10-foot taller proposed 112-

foot tall Verizon monopine proposed at a slightly higher altitude on the flank of Heavenly Valley Ski Resort a few blocks from the base of the tram station (California Lodge base area). Yet AT&T's monopine faux PVC pine branches and needles experienced severe damage and degradation from the elements – primarily constant exposure to the winds, extreme UV exposure, tremendous temperature variations, and heavy snow and ice burdens. The huge amount of PVC detritus that Mr. Aaron and his team found at the 1857 Hekpa Drive site likely represents just a small percentage of the PVC pine needles and branches that have broken off the tower since 2018. In particular, the massive quantities of falling PVC pine needles are carried by the wind substantial distances, and these brittle, delicate PVC needles rapidly break down into tiny PVC particles, which degrade further into PVC microplastics.

Looking at a topographical map, scattered PVC pine needles and particles from AT&T's 1857 Hekpa Drive monopine will eventually run off into either the Saxon Creek drainage basin on one side or else onto Pioneer Drive and into its stormwater system on the other. (The 2002 site plan includes a topographical map showing that the site drops steeply into the Saxon Creek drainage basin on the side away from Pioneer Drive.) In both instances, these PVC pine needle microplastics will wind up in Lake Tahoe, adding to the toxic microplastic problem.

Our November 4, 2021 video (*See [link.](#)*) incontrovertibly shows that monopines such as the one Verizon proposes at 1360 Ski Run Boulevard pose a very serious environmental hazard and are a source of very substantial illegal solid waste pollution. Our November 4, 2021 video (*See [link](#)*) was filmed after one of our supporters, acting on a hunch, had taken a hike up the mountain at Heavenly Valley to a ridgeline where a cell tower is located. In the area surrounding the base of that cell tower, he found broken faux PVC pine branches and PVC pine needles scattered in a vast debris field, with the PVC pine needles strewn far and wide as they had been dispersed by the extreme winds at that exposed high-altitude site. He filled two large lawn-size garbage bags with the PVC debris, and brought it to our Zoom session, leaving us shell-shocked, and leading us to commission Mr. Aaron to film the November 4, 2021 video.

In an effort to gain some understanding of the quantity of PVC plastics that will be used to adorn Verizon's proposed 112-foot-tall monopine, on March 8, 2022, Attorney Robert Berg contacted Valmont Structures, one of the leading manufacturers of monopines and other camouflaged wireless communications towers in the U.S. In fact, Valmont claims that its Larson group created the first monopine in 1992. Mr. Berg spoke with Marcello Posada, a regional sales representative for Structures and Small Cell/5G Sales. Mr. Posada explained that monopines are custom-designed for each customer's particular site. A monopine is simply a camouflaged version of a monopole cell tower. Because the camouflaging materials cannot interfere with the RF signals, they cannot be made out of metal. The monopine faux pine branches must be "invisible" to the RF signals. Thus, Valmont and most other monopine manufacturers construct the faux pine branches out of PVC tubing. Use of PVC results in extremely low insertion and return loss which is required for today's wireless technology to work properly. The PVC pine branches are coated or wrapped with epoxy resin to harden. Sometimes, the faux pine branches are molded or cast with solid epoxy resin.

The faux pine needles are typically made from recycled PVC. They are very similar to the faux PVC pine needles consumers receive when they purchase an artificial Christmas tree. The faux pine needles are cut from strips of PVC plastic, and then they are shredded to resemble pine needles which are held together by a center spine. A machine cuts through the artificial pine needle strands to achieve the desired length.

Short videos demonstrating parts of the manufacturing process of the faux PVC monopine branches and pine needles can be found on the website of another monopine and cell tower manufacturer, Ehresmann Engineering. See <https://ehresmannengineering.com/towers-and-poles/monopines/>.

Mr. Posada, the Valmont Regional Sales Manager, explained that the Larson brand monopine branches are available in four different lengths: 4 foot; 6 foot; 10 foot; and 12 foot. A four-foot branch laden with pine needles weighs about 20 to 25 pounds. Valmont's Larson monopine brochure can be found at [https://www.valmontstructures.com/docs/librariesprovider97/default-document-library/valmont-larson-pine-tree-solutions.pdf?sfvrsn=61b6db39\\_2](https://www.valmontstructures.com/docs/librariesprovider97/default-document-library/valmont-larson-pine-tree-solutions.pdf?sfvrsn=61b6db39_2). This brochure shows examples of the available PVC pine needle sprigs which are glued with epoxy resin to the epoxy-coated PVC faux pine branches.

Antennas can also be covered with camouflage faux pine “socks,” which Valmont offers in both standard and high-density models in standard lengths of four, six, and eight feet and widths of 36 or 48 inches. Custom sizes are available. The socks are made of PVC mesh, and dense tufts of faux pine needles are zip tied to the mesh. See [https://www.sitepro1.com/store/cart.php?m=product\\_detail&p=5934](https://www.sitepro1.com/store/cart.php?m=product_detail&p=5934).

We don't know for certain the amount of PVC faux pine branches and PVC pine needles Verizon intends to place on its proposed monopine. Remarkably, neither does TRPA, and TRPA staff have absolutely no interest in finding out. Verizon itself must know the answer, but it hasn't told anyone. That's because the poundage of PVC material used to “camouflage” the 112-foot-tall cell tower is enormous. Notably, none of the documents Verizon has provided to TRPA in connection with its application for the proposed monopine at 1360 Ski Run Boulevard provides any discussion, description, specifications, or poundage of the “camouflage” materials to be used to make the cell tower appear to be a faux pine tree. Having built thousands of monopines across the country over the past 20 years, Verizon certainly has the details, and it should have included this critical information in its application. Yet the site plan Verizon has filed with TRPA is entirely silent. The site plan simply describes the project as a new Verizon Wireless 112' 0" high monopine with the bottom monopine branches beginning at an elevation above ground of 30' 0" and the top of the monopine branches at an elevation above ground of 112' 0". See <https://parcels.laketahoeinfo.org/Parcel/Detail/025-580-007>.

In an effort to find out the approximate weight of PVC material Verizon's proposed monopine may be cloaked with, Ben Levi, a member of our professional team, contacted Allfasteners USA LLC, a leading supplier of fasteners to the construction industry, and a

manufacturer of monopine cell towers. Mr. Levi asked the company for the approximate weight of the PVC material used in a 112-foot tall monopine. Zaul Amezcua, Jr., an Account Manager for the company, based in Santa Fe Springs, California, responded on March 10, 2022, stating: “Without drawings or a list of what length and type of branches are needed, we won’t be able to give you an accurate weight for these. However, I would guess it would be about 5,000 lbs for a 110’ tower.” Based on the Allfasteners webpage, its monopine towers appear to contain a rather sparse amount of PVC faux branches. See <https://info.allfasteners.com/monopine-concealment?hsLang=en>. Extrapolating from this datapoint, we believe that Verizon’s 112-foot- tall proposed monopine, with a denser canopy, likely will contain well in excess of 5,000 pounds of faux PVC branches and pine needles, all subject to the same or greater degradation and dispersion as AT&T’s 1857 Hekpa Drive monopine has exhibited.

The glued on or zip tied PVC faux pine needle sprigs and PVC faux pine branches are no match for the hostile, high-wind, heavy snow environment of the Lake Tahoe basin, and it's no surprise that these monopine towers shed prodigious quantities of broken PVC faux pine branches and even more colossal quantities of PVC pine needle sprigs across extensive debris fields below, as Appellants' November 4, 2021 video dramatically demonstrates. Our four and one-half minute video should shock the conscience of TRPA staff and Governors. This massive, wanton dumping of faux PVC pine needles and PVC branches captured in Mr. Aaron’s video is repeated at every one of the multitude of monopines TRPA has permitted throughout the Lake Tahoe Basin in recent years – without ever considering the horrific environmental impact of such uncontrolled and, indeed, illegal solid waste discharge and pollution into the protected waters.

**The PVC Microplastics That Will be Illegally Discharged and Dumped from Verizon’s Proposed Monopine at 1360 Ski Run Boulevard are Highly Toxic and Present a Grave Danger to Lake Tahoe’s Environment**

Microplastic pollution has been recognized as a tremendous problem in the State of California. On February 23, 2022, California became the first State in the nation to adopt a comprehensive, multiyear strategy to reduce microplastics in the environment. On that date, the California Ocean Protection Council approved the “Statewide Microplastics Strategy,” see [https://www.opc.ca.gov/webmaster/ftp/pdf/agenda\\_items/20220223/Item\\_6\\_Exhibit\\_A\\_Statewide\\_Microplastics\\_Strategy.pdf](https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20220223/Item_6_Exhibit_A_Statewide_Microplastics_Strategy.pdf), which sets forth a roadmap for California to take a national and global leadership role in managing microplastics pollution. “Foundational to this Strategy is a recognition that the state must take decisive, precautionary action to reduce microplastics pollution, while scientific knowledge and understanding of microplastics sources, impacts, and successful reduction measures continue to grow.” *Id.* at 1.

The Report states:

In California, microplastics have been observed in Monterey Bay, San Francisco Bay, the Greater Farallones National Marine Sanctuary, Lake Tahoe, and in Southern California

waterways, including preproduction plastic pellets (‘nurdles’) that spill from manufacturing facilities and reach California’s beaches. Microplastics are not only a marine pollution problem. Microplastics have been found nearly everywhere scientists have looked, from pristine mountain streams to agricultural soil, and within human placenta, stool samples, and lung tissue. Microplastics can enter the food web, where plastic particles can transfer into tissue, and expose humans to plastic-associated and endocrine disrupting chemicals from seafood consumption. (Citations omitted).

*Id.* at 4.

Microplastics pollution in the Lake Tahoe Basin is now recognized as a very serious issue which has triggered both the University of California, Davis, Environmental Research Center (“TERC”) and the University of Nevada System’s Desert Research Institute (“DRI”) to institute coordinated and complementary research programs to understand the complete picture of the threat that microplastics pose. While DRI is studying the inputs, or where microplastics are coming from, and downstream microplastic contamination of water resources, TERC is researching what happens to microplastics after they end up in the Lake. *See* <https://storymaps.arcgis.com/stories/0a2ceba61c47470e8e18566268f9bfcf>.

Microplastic pollution and its environmental effects have been studied more intensively in the marine environment, though prolific research has been conducted in freshwater regimes as well. The *Statewide Microplastics Strategy* reports that “[m]icroplastics have a range of polymer types, sizes, shapes, and associated chemicals, with irregular shapes and fibers found increasingly in marine organisms, including mammals, fish, mollusks, and crustacea. In toxicity studies, microplastic exposures have been shown to cause adverse effects, including tissue inflammation, impaired growth, developmental anomalies, and reproductive difficulties.” *Id.* at 4 (citations omitted).

The research on the prevalence, types, and toxicity of microplastics in the Lake Tahoe Basin and the Lake itself is ongoing. However, the peer-reviewed scientific literature based upon studies of other freshwater bodies and marine environments is already extraordinarily robust, and clearly demonstrates that microplastics generally, and PVC microplastics in particular, are toxic pollutants and pose great threats to the ecosystems where they are found. A few recent studies, just scratching the surface of the large body of peer-reviewed research on the toxic environmental effects of *PVC microplastics* pollution, are described below.

Jingyi Li, et al., “Microplastics in freshwater systems: a review on occurrences, environmental effects, and methods for microplastics detection,” 137 *Water Research* 362 (June 15, 2018), <https://doi.org/10.1016/j.watres.2017.12.056>, present a comprehensive overview of the omnipresent and abundant microplastic pollution of freshwater systems and its toxic environmental effects.

Bin Xia, et al., “Secondary PVC microplastics are more toxic than primary PVC microplastics (PMP) to *Oryzias melastigma* embryos,” 424 *Journal of Hazardous Materials*

127421 (2022), <https://www.sciencedirect.com/science/article/abs/pii/S030438942102389X>, found that irregularly-shaped partially degraded secondary microplastics (SMP) made from PVC, which originate from the fragmentation of larger plastic items through mechanical abrasion, photooxidation, and biological action, cause greater toxicity to fish embryos than PMP. The authors used PVC as the test material because it is one of the most widely used plastics and it is more easily fragmented than other thermoplastics. See Andrady, A.I., "Microplastics in the marine environment," 62 *Marine Pollution Bulletin* 1596, 1605 (2011). Bin Xia, et al. determined that exposure of marine medaka embryos to both PMP and SMP made of PVC caused a range of negative effects, including changes in heart rate, morphological abnormalities, and malformation types. Crucially, the fragmented, degraded SMP showed greater negative effects compared to those from PMP.

Qiongje Wang, et al., "The toxicity of virgin and UV-aged PVC microplastics on the growth of freshwater algae *Chlamydomonas reinhardtii*," 749 *Science of the Total Environment* 141603 (December 20, 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0048969720351329>, found that both virgin and aged PVC MPs have negative effects on the growth of *C. reinhardtii* freshwater algae, which leads to the reduction of chlorophyll-a level in the cells. Furthermore, aged-PVC MPs were more toxic than virgin-PVC MPs. The carbonyl groups formed on the surface and the increased zeta potential of the aged-PVC MPs affected the interaction between the microplastics and the algae, which increased the toxicity of aged microplastics.

Jung Meng, et al., in "Effects of chemical and natural ageing on the release of potentially toxic metal additives in commercial PVC microplastics," 283 *Chemosphere* 131274 (November 2021), <https://www.sciencedirect.com/science/article/abs/pii/S004565352101746X>, explain that various chemical substances, such as potentially toxic trace metals, are used as plastic additives to improve the performance of polymers and extend the service life of plastic products. However, these added trace metals are likely released from plastic into the environment when the plastic becomes a pollutant. They studied chemical aging of commercial polyvinyl chloride (PVC) microplastics using hydrogen peroxide (H<sub>2</sub>O<sub>2</sub>) and natural aging of PVC that had been added to an alkaline paddy soil and evaluated the release of trace metals from PVC. They found enhanced release of trace metals from PVC. The authors concluded that chemical and natural aging of PVC microplastics have the potential to lead to the release of copper, manganese, nickel, lead, and zinc from the commercial PVC into aquatic and terrestrial environments.

J. Boháčková, T. Cajthaml, in "Effect of PET and PVC microplastics on rainbow trout cell lines RTgill-W1, RTG-2 and RTL-W1," 350 *Toxicology Letters Supplement*, September 2021, <https://www.sciencedirect.com/science/article/pii/S037842742100669X>, found that PVC microplastic exposure induced significant increases in Reactive Oxygen Species (ROS) generation in three lines of rainbow trout cells. ROS can cause irreversible damage to DNA as it oxidizes and modifies some cellular components and prevent them from performing their original functions.

Subharthe Samandra, et al., in “Microplastic contamination of an unconfined groundwater aquifer in Victoria, Australia,” 802 *Science of the Total Environment* 149727 (January 1, 2022), <https://www.sciencedirect.com/science/article/abs/pii/S0048969721048026>, analyzed eight of the most commonly found microplastics, including PVC, in triplicate groundwater samples from five sampling sites across seven capped groundwater monitoring bores in an aquifer in Victoria, Australia. Microplastics were detected in all seven monitoring bores. Polystyrene and PVC accounted for 59% of the total sum of all microplastics detected in the groundwater samples. The authors concluded that the most probable avenue for the microplastics to enter into the groundwater system was through soil permeation.

Alessandro Balestrier, et al., in “Differential effects of microplastic exposure on anuran tadpoles: a still underrated threat to amphibian conservation,” 303 *Environmental Pollution* 119137 (June 15, 2022) (available online), <https://doi.org/10.1016/j.envpol.2022.119137>, built upon the body of research reporting that microplastics threaten a wide variety of terrestrial, marine, and freshwater organisms. They investigated the effects of microplastics on anuran amphibians (frogs and toads), one of the most threatened taxa worldwide. To assess the effects of MPs on the growth and survival of the Italian agile frog (*Rana latastei*) and green toad (*Bufo balearicus*), they exposed tadpoles to three different concentrations (1, 7, and 50 mg L<sup>-1</sup>) of an environmentally relevant mixture of microplastics (HPDE, PVC, PS and PES), recording data on their activity level, weight and mortality rates. While the effects of MPs on green toad tadpoles were negligible, Italian agile frog tadpoles were severely affected both in terms of growth and activity level, with high mortality rates even at the lowest MP density (1 mg L<sup>-1</sup>). Their results suggest that MP contamination of freshwater habitats may contribute to the ongoing decline of anuran amphibians.

Zhihao Yuan, et al., in “Ranking of potential hazards from microplastics polymers in the marine environment,” 429 *Journal of Hazardous Materials* 128399 (May 5, 2022) (available online), <https://www.sciencedirect.com/science/article/pii/S030438942200187X?via%3Dihub>, developed a semi-quantitative risk assessment model to rank microplastics (MPs) polymers in terms of their potential human health concerns emerging from marine exposure pathways. MP polymers of various kinds have different toxicity potentials when decomposed into monomers. Also, the toxicity of MPs is influenced by the particle size distribution of MPs. The screening strategy prioritized PUR, PVC, PAN, ABS, PMMA, SAN, TPU, UP, PET, PS, and HDPE as the top-ranking polymers of concern (in descending order). PVC microplastics thus were ranked as the second highest MP category of concern to human health because of their toxicity, their longevity (forever), and their non-biodegradability.

The prospect of several thousand pounds of degraded PVC pine needle and PVC pine branch fragments separating from Verizon’s proposed monopine at 1360 Ski Run Boulevard due to exposure to the extreme environmental conditions – and then being dispersed by the winds, snows, rains, and gravity across a wide debris field, before permeating the soil or flowing into the surrounding stormwater systems or drainage basins and thereafter into nearby Lake Tahoe

should horrify this Board into action, and this Board should grant the appeal to protect the Lake Tahoe Basin from this illegal PVC pollution discharge.

**TRPA’s Proposed Condition 11 Cannot Solve Verizon’s PVC Pollution Problem and the Report of Verizon’s Consultant, Integral Consulting, Inc., “Evaluation of Monopine Needles, Verizon Wireless Monopine, 1360 Ski Run Boulevard, Lacks any Scientific Support, Evidentiary Support, is Utterly Speculative and Palpably Baseless, and Should not be Admitted into Evidence**

In its March 4<sup>th</sup> Letter at 5, Verizon argues: “Appellants claim that plastic needles falling from the Approved Facility will pose a toxic hazard and pollute Lake Tahoe. These claims are refuted in a technical memorandum by Integral Consulting, Inc., attached as Exhibit G. The faux tree tower components, made of durable PVC, are ‘unlikely’ to result in ‘significant breakdown...into microplastics that would lead to pollution of waterways.’” Verizon’s and its consultants’ abject lies about the purported durability of its PVC faux pine needle and branch components and the purported unlikeliness of the materials breaking down into PVC microplastics and subsequently posing a toxic threat to Lake Tahoe are nearly as preposterous as Comrade Putin’s grotesque pronouncements that Russia’s “special operations” in Ukraine are needed to “de-Nazify” the country.

Fundamentally, *the unsolvable problem* for Verizon and TRPA here is that given the extreme environmental conditions present in the Lake Tahoe Basin – strong winds, heavy snow and ice, and extreme UV exposure, faux PVC pine branches and especially, the faux PVC pine needles glued onto to those PVC pine branches, will break off from the monopine cell tower and will be dispersed in an uncontrolled manner over a wide debris field. The PVC pine needles in particular become brittle, and fragment into tiny PVC pieces which are even more easily transported by wind and run-off into the surrounding drainage basins and stormwater basins. These PVC fragments will eventually wind up as microplastic pollution in the Lake itself.

The Lake Tahoe Basin is governed by some of the strictest water quality and solid waste control laws in the country. Simply put, any and all of the PVC material that breaks off from Verizon’s monopine and falls within the Basin constitutes *illegal dumping*. No means exists to prevent such illegal dumping. And Condition 11 to Verizon’s TRPA permit, which TRPA and Verizon have worked out as a “solution” to this illegal dumping, cannot possibly be effective given the magnitude of the problem as evidenced by the November 4, 2022 video we have submitted. TRPA proposed its Condition 11 “solution” only after Appellants raised the newly-discovered issue in their December 1, 2021 Statement of Appeal. In Appellants’ Statement of Appeal, at 10-20, we explain in great detail the various federal, State, and TRPA laws that will be violated once Verizon’s monopine at 1360 Ski Run Boulevard begins its inevitable “defoliation” of its faux PVC pine needles and pine branches. Unsurprisingly, neither Verizon nor its consultant, nor TRPA Staff bother to mention these blatant statutory violations in their responses to our Statement of Appeal. Condition 11 does nothing to prevent these violations from occurring in the first instance. Indeed, Condition 11 expressly recognizes that shedding of PVC material from the monopine *will take place*. The shedding of the PVC material is illegal,

however, as noted above, and TRPA is obligated to prevent such illegal dumping, not to authorize it which Condition 11 does.

Condition 11, then, is simply a remediation measure to require Verizon to clean up the illegal pollution that TRPA otherwise will permit. Even if TRPA were legally able to authorize Verizon to illegally dump the PVC materials from its monopine, provided that Verizon agrees to clean it up later – which TRPA cannot legally do – TRPA’s remediation plan is doomed to failure. As we explain below – and as is evident in our November 4, 2021 video – the PVC detritus which breaks off from the monopine disperses across a broad debris field, and tiny fragmentary pieces are carried considerable distances by strong winds and run-off. Moreover, many of the tiny, brittle PVC fragments become interspersed with the natural ground covering and cannot be recovered unless some giant vacuum is used (undoubtedly violating TRPA noise and air pollution ordinances). The idea that effective remediation can be accomplished through a twice per year clean up – once in the spring after the snow melts and once in the fall before the snows come – is truly laughable. First, whatever the wind carries away from the tower is never going to be recoverable. The tiny fragmentary parts are never recoverable practically speaking. And much of the transport of the PVC detritus will occur during storm runoff or during the snow melt off. Thus, a substantial amount of the PVC detritus will no longer be around or recoverable when the spring and fall clean up days are held.

The Integral Consulting, Inc. report, dated March 3, 2022 (“the Integral Report”), is remarkable for its utter lack of actual data concerning the materials and the quantities to be used to shield the proposed Verizon monopine at 1360 Ski Run Boulevard. The authors, Bridgette R. DeShields and Sean L. Culkin, are paid litigation consultants, not academic scientists, and neither holds a Ph.D. degree. They don’t bother to obtain the precise specifications for the monopine camouflage products, noting cursorily: “Monopine needles consist of a spine and ‘needles’ that mimic the appearance of a pine tree. Based on information from the manufacturer, the spine and the needles are made of PVC. They are designed to be relatively durable in the environment, although the materials can ‘shed’ from the structure over time.” Integral Report at 1-2.

This “information” is so vague as to be completely useless. Who is the manufacturer? What information did the manufacturer provide to the consultants? What is the PVC actually composed of? PVC manufacturers add plasticizers to make the PVC more flexible and other additives which are often toxic (e.g., phthalates which can damage the liver, kidneys, lungs, and reproductive system). PVC also contains dioxin, a known carcinogen. As the PVC breaks down, these toxins can leach into the soil and water. How many faux PVC pine branches will be placed on the monopine and what lengths will they be? How will the faux PVC pine needles be affixed to the faux pine branches? What will the total volume of PVC faux pine needles and branches be? What will the total weight in pounds of the PVC faux pine needles and branches be? From our own independent industry investigation, as set forth above, we expect that over 5,000 pounds of PVC faux pine needles and branches will be affixed to Verizon’s proposed monopine.

Contrast Ms. DeShields' and Mr. Culkins' benign assertion that "[the PVC spine and needles] are designed to be relatively durable in the environment, although the materials can 'shed' from the structure over time," *id.* with the reality of what our 4 ½ minute video shot by Mr. Aaron at the base of AT&T's comparable monopine at 1857 Hekpa Drive so dramatically shows – a large debris field filled with broken sprigs of faux PVC pine needles and faux pine branches, and splintered fragments of faux PVC pine needles scattered everywhere and sticking into the soil. See [link](#).

Verizon's paid consultants prepared their March 3, 2022 report three months after our video was filed in Appellants' Statement of Appeal with TRPA. These paid consultants plainly had access to this video, and yet, they have the audacity to state in their report, "because of their composition, the material specifications, and the methods of usage and maintenance, significant breakdown of monopine needles into microplastics that would lead to pollution of waterways is unlikely." Integral Report at 1. Your eyes won't deceive you. Watch the video link again. See [link](#). But Verizon's consultants have no compunction about lying to you – assuring you, without providing any data or evidence, that these monopine needles won't significantly breakdown into microplastics and then pollute the waterways in the Lake Tahoe Basin.

Verizon's paid consultants cite to a few studies on microplastic weathering and then boldly proclaim that "relatively large, rigid plastics like the majority of the components on the PVC branches and monopine needles on faux tree tower structures have less potential for breakdown to microplastics in the relatively static, upland environment in which they would be deposited, as is observed at the proposed site at Ski Run Boulevard." *Id.* at 2. This conclusion is preposterous, and is belied by our video. Our video clearly shows that the faux PVC monopine needles are anything but "relatively large, rigid plastics;" rather, they are small and flexible before they become brittle in the elements. Moreover, the monopines in the Lake Tahoe Basin are exposed to extreme weather conditions – bitterly cold temperatures in the winter; heat in the summer; extreme winds; heavy snow, ice, and rain; and prolific UV exposure. It's really no surprise that in these tough environmental conditions, the faux PVC pine branches and pine needles break off the monopine wily-nily, and the PVC pine needles in particular are blown to kingdom come. The proposed site at 1360 Ski Run Boulevard, on the flank of the Heavenly Valley Ski Resort, is anything but a "relatively static, upland environment."

Verizon's paid consultants acknowledge that studies of microplastics in Lake Tahoe are in progress and detailed study reports have yet to be published. Yet these consultants draw wholly improper conclusions based on a dearth of information, and thereby attempt to minimize the illegal severe pollution that the PVC pine needle and branch shedding is presently causing in the Basin. For example, the consultants state that PVC is not a major contributor of the plastics found in the lake. *Id.* That conclusion is based on the report of a 2020 "clean up the lake" litter drive in which some scuba diver volunteers jumped in the lake and pulled out litter. Verizon's consultants' analysis of the "Clean up the Lake" report completely misrepresents the nature of the clean-up project, and their conclusion that PVC is not a major contributor of the plastics found in the lake is an absurd extrapolation from extremely limited data. See <https://cleanupthelake.org/wp-content/uploads/2021/04/CUTL-2020-REPORT->

[Version-1-2.pdf](#). The source of the litter found by the divers was primarily from boaters and other beachfront activity, and the litter removed was large objects visible to the divers. Most of the removed litter consisted of metal objects, especially aluminum cans, a few anchors, and fishing lures and sinkers. Large PVC pipe was, in fact, located by divers, but was not removed – the location of the PVC debris was simply marked. Most importantly, this report has nothing at all to do with microplastics within Lake Tahoe.

Verizon’s paid consultants then turn to a study of microplastics in San Francisco Bay, and disingenuously assert that this “relevant study” is “representative of other large water bodies.” They state that “[s]imilar to Lake Tahoe, several tributaries and storm drain systems empty into San Francisco Bay,” but maintain that “San Francisco Bay is more developed and urban than Lake Tahoe, so it is likely that it receives a higher volume of plastic pollution.” The consultants state, without any support, “[h]owever, the types of plastic pollution are likely similar, although there could be more sources of PVC given its widespread usage in the Bay Area. The Bay Area also likely has many more cell towers with monopine needles. In fact, based on information from Verizon Wireless, there are approximately seven times more cell towers with monopine needles in the Bay Area than in the Tahoe Basin.” Integral Report at 4.

These ersatz “scientists” draw sweeping parallels between the Lake Tahoe Basin and the San Francisco Bay region that are patently ridiculous. First, what’s the geographical definition of the San Francisco Bay region? It depends on who defines it. It encompasses at least three major U.S. cities, San Francisco, Oakland, and San Jose, as well as Silicon Valley. These urban centers and environs have major industrial operations, manufacturing and distribution facilities, utility plants, and airport, rail, highway, and seaport facilities. The San Francisco Bay region is generally thought to have a population of about 7 million. The actual bay itself is between 400 and 1,600 square miles, depending upon which sub-bays, estuaries, and wetlands are included. San Francisco Bay is the largest estuary on the U.S. West Coast, and its waters range from brackish to salt. Significantly, San Francisco Bay drains approximately 40% of the freshwater in California, much of it coming from the Sacramento and San Joaquin Rivers and the Sierra Mountains, passing through rich agricultural lands. Moreover, San Francisco Bay passes under the Golden Gate Bridge into the Pacific Ocean. The tidal movements are large – about six feet - and currents are strong, especially under the Golden Gate Bridge where they can exceed six knots.

Lake Tahoe, with a surface area of 191 square miles, runs about 22 miles in length and 12 miles in width. It is the second deepest lake in the United States, bottoming out at 1645 feet. Lake Tahoe is a freshwater lake, and sits in a 505 square mile watershed, fed by 63 tributaries. Lake Tahoe has only one outlet, the Truckee River. The Lake Tahoe Basin has a year-round population of about 40,000, with peak days of about 300,000. South Lake Tahoe City is the largest municipality, with about 21,000 residents. Development in the Lake Tahoe Basin is supposed to be strictly controlled, and most of the development services the recreational and vacation industries, with many second home properties, ski resorts, boating and recreational facilities, and businesses serving these interests.

The Lake Tahoe Basin and the San Francisco Bay region thus could hardly be more different. Yet Verizon's paid consultants argue nonsensically in their report that "the types of plastic pollution are likely similar." *Id.* These consultants also state that Verizon says that the Bay Area has approximately seven times more monopine cell towers than the Tahoe Basin. *Id.* Ironically, that number just demonstrates how insanely over-densified the Lake Tahoe Basin is with monopine cell towers, thanks to TRPA's ultra-lax permitting standards and cozy relationship with Verizon. (Again, the Bay area has a population of 7 million year-round compared to 40,000 year-round residents in the Lake Tahoe Basin, but only seven times the number of monopine towers).

Given that the Bay Region is highly urbanized and industrialized, and drains 40% of California's freshwater flowing through vast agricultural drainage basins and the Lake Tahoe Basin is nearly entirely recreational and residential, Verizon's consultants' unsupported claim that the types of plastic pollution are likely similar in both the Bay Region and the Lake Tahoe Basin is absolutely ludicrous. Thus, the reported findings in the San Francisco Bay study to the effect that PVC is not listed as a predominant source of microplastics cumulatively in that vast Bay really is meaningless for the purpose of analyzing the dangers to Lake Tahoe from the virtually certain likely illegal discharge of up to 5,000 pounds of fragmented PVC faux pine needles and branches from Verizon's proposed monopine, in violation of multiple federal, State, and TRPA laws against solid waste pollution of the lands and waters in the Lake Tahoe Basin.<sup>1</sup>

Of course, the sample of peer-reviewed scientific studies we cite, do show that PVC fragments are often a predominant source of toxic microplastic pollution in bodies of water, including freshwater bodies, the soil, and groundwater.

Verizon's paid consultants also posit that "[s]ignificant migration of monopine needles from the proposed tower site to Lake Tahoe via existing surface water pathways is unlikely." Integral Report at 6. As our video demonstrates, the faux PVC pine needles and branches don't just drop straight down from AT&T's 110-foot tall monopine. Rather, they are splayed out over a wide debris field across the base of the tower – and those are mostly the larger sprigs and branches containing PVC pine needles. Verizon's proposed monopine site sits on the flank of a major ski resort high up in the High Sierra mountains, a region renown for prodigious snowstorms, high winds, extreme temperatures, and abundant UV exposure. In the real world, the PVC pine needles and branches are most likely to separate from the monopine during extreme weather events, including blizzards and windstorms. Under those conditions, the PVC

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<sup>1</sup> Notwithstanding that the study's findings are inapplicable to Verizon's PVC pollution of the Lake Tahoe Basin, the study itself provides a comprehensive overview of the serious environmental problems of plastic pollution in the waterways, and excellent citations to many peer-reviewed scientific studies demonstrating the toxic harms such plastic pollution may cause. The study, titled "Understanding Microplastic Levels, Pathways, and Transport in the San Francisco Bay Region, was authored by Rebecca Sutton, et al., and was issued by the San Francisco Estuary Institute in October 2019. SFEI-ASC Publication #950. See [https://www.sfei.org/sites/default/files/biblio\\_files/Microplastic%20Levels%20in%20SF%20Bay%20-%20Final%20Report.pdf](https://www.sfei.org/sites/default/files/biblio_files/Microplastic%20Levels%20in%20SF%20Bay%20-%20Final%20Report.pdf).

pine needles in particular likely will be carried far and wide by the wind before they settle down to the ground. Likewise, PVC pine needle sprigs and fragments which have previously broken off from the monopine and may be lying in the debris field likely will be blown farther afield during subsequent storms and wind events. That's especially so as the fragments weather over time and fracture into ever smaller particles.

The site for the proposed monopine at 1360 Ski Run Boulevard is on a moderately steep slope where the landowner presently operates a snow tubing run during the winter. The property drains down into the Bijou Park Creek drainage basin, and a stream environment zone ("SEZ") is located just a few feet from the proposed tower site. Just downhill in this drainage basin the City of South Lake Tahoe is pursuing planned improvements for the Bijou Park Creek Stream Environment Zone. The Project has been proposed by the City to address frequent flooding and stormwater management challenges in the Bijou Park Creek watershed. Past development in the watershed has significantly altered drainage patterns. Bijou Park Creek receives more water and at higher flow rates than the creek can adequately convey, resulting in flooding of adjacent roads and residential properties. In addition to the peak high flow volumes, the waters entering Bijou Park Creek tend to be sediment-laden and can contribute to the decline in the clarity of Lake Tahoe. The proposed Project will address declining water quality, nuisance flooding, and degradation of the Bijou Park Creek Stream Environment Zone (SEZ) that has occurred due to the past development impacts on the watershed.

Verizon's paid consultants contend that "[s]ignificant migration of monopine needles from the proposed tower site to Lake Tahoe via existing surface water pathways is unlikely...If any monopine needle pieces were to migrate outside the enclosure, very few would be likely to end up in Lake Tahoe because: • There is no readily observable pathway for plastic falling in the immediate vicinity of the proposed tower to enter Bijou Park Creek via surface water runoff...". *Id.* at 6. These consultants simply ignore the obvious pathway for PVC pine needles and fragments to enter the watershed – they are carried to the stream environment zone by the wind. The Lake Tahoe Basin is a windy area. In the summer, the famous diurnal Washoe Zephyr howls from the west each afternoon with gusts in the 30 m.p.h. range, driven by temperature-induced pressure differentials. During winter storms, high winds are frequent, gusting to 50 to 60 m.p.h. throughout the Basin, with winds in excess of 100 m.p.h. frequently occurring at the High Sierra ridge tops. Contrary to Verizon's consultants' baseless musings, strong winds blasting through the monopine faux pine's 112 foot-high canopy will easily pry away PVC pine needles and fly them hundreds of feet away from the tower before they finally fall to the earth. And once on the ground, these PVC pine needles – and their broken fragments – are transported further by later wind gusts and extreme wind events. As the fragments become smaller, windborne transport becomes easier and further.

Verizon's consultants suggest that a new shelter to be constructed immediately adjacent to the tower, a motel, a retaining wall, and "other structures" would act as local barriers to surface water flow and any associated plastic transport. *Id.* The faux PVC pine branches and PVC pine needles, however, are to be placed at a first level height 30 feet above ground level and are to top out at 112 feet above ground level. The PVC pine branches and PVC

pine needles will tower over these adjacent “local barriers” by many feet, and the wind transport pathway will carry the toxic PVC pine needles above and beyond these purported local barriers.

Verizon’s consultants assert that the proposed tower is not in the Bijou Park Creek SEZ. *Id.* They don’t tell you it will be sited just a few feet away. They claim the tower site will be approximately 330 linear feet from the uppermost section of the Bijou Park Creek drainage area. Even if true, PVC pine needles and fragments ripping away from the PVC branches suspended between 112-feet and 30-feet above ground level can easily be transported several hundred feet in strong and extreme wind conditions into the Bijou Park Creek SEZ. While the tower site may not be within areas documented to be prone to flooding or within the documented 100-year flood inundation area of the creek, PVC needles and fragments may be deposited on the ground nearby, and during heavy precipitation or snow-melt, this PVC detritus may be transported into these flood zones and then carried away swiftly into the Lake itself.

The Integral Report posits that the uppermost drainage area of Bijou Park Creek is too far – approximately 1.1 miles – from the creek’s outfall into the Lake for fallen plastic monopine needles to travel. *Id.* at 7. That unsupported conclusion makes no sense. As the video we submitted shows, the PVC needles break down into tiny fragments which, once in a drainage system, are easily transported through that system, especially during high water periods such as spring run-off or following heavy rains. Finally, the consultants say that the Bijou Park Creek Watershed Restoration Project is currently under development, and once it is completed, all will be well and the project will provide additional barriers against transportation of the PVC needles from Verizon’s monopine site. *Id.* Maybe the restoration project will be completed, and maybe it will provide some additional protections. Who knows? In the meantime, we do know that Verizon’s monopine will illegally shed prodigious amounts of toxic PVC pine needles over a wide debris field, just as the monopine of its competitor, AT&T, is doing not far away at 1857 Hekpa Drive. The Board of Governors has a duty under the Compact to prevent this pollution from happening.

Appellants respectfully request the Board of Governors to grant their appeal.

Very truly yours,

/s/ Robert J. Berg

Robert J. Berg

## **Comments on TRPA Staff Report (March 16, 2022) and Verizon Statement (March 4, 2022)**

Julian Gresser, Counsel for Appellants—Tahoe Stewards LLC, Environmental Health Trust, Tahoe for Safer Tech, Monica Eisenstecken, David Benedict

**A. In General.** TRPA is not a supra-constitutional agency, and the TRPA Board does not have discretion to set aside the Interstate Compact, other federal and state laws. TRPA is mandated by Congress to uphold the Public Trust to protect the Lake Tahoe Region. This obligation is non-discretionary. It cannot be delegated to the wireless industry or TRPA’s staff. The Public Trust is being interpreted to ensure Zero Discharge of hazardous and toxic waste onto lands and waters in Lake Tahoe and related hydrologic zones. The mandate of the Compact is to uphold a waste discharge prohibition long enshrined in law, not to advance the interests of the wireless industry. The decision has already been made by Congress and the TRPA through the Regional Plan: No discharge of toxic and hazardous solid waste directly or indirectly into Lake Tahoe or its associated environmentally sensitive land areas is permissible.

### **B. TRPA Staff Report**

- **TRPA must deny Verizon permit on water quality grounds alone.**
  - Verizon is proposing to allow tens of thousands of pounds of verifiable toxic and hazardous plastic wastes onto lands within the Lake Tahoe hydrologic unit, and only mitigate this environmental catastrophe by so-called “best management practices.” Such practices have not been established for this Project. The proposed perfunctory “clean up” twice a year is grossly inadequate, given that the toxic waste falls continuously onto the ground, and the damage to the Lake is cumulative. The record is replete with evidence that the wastes from a previously approved monopine tower (the Angel’s Roost) has plastic debris scattered over an area extending hundreds of feet beyond the tower footprint. Because the plastic needles are detached during high winds, which are a common feature in the Lake Tahoe Region, their dispersal beyond the Project boundary is certain. Such wastes are not subject to collection, and thus violate the prohibition against uncontrolled solid waste discharges. Verizon’s proposal and TRPA’s approval violates the Zero Discharge standard established under federal and state water quality laws and Articles V and VII of the Compact, the Regional Plan, and [recent federal court cases](#).
  - Permitting these continuous discharges and establishing this fatal precedent will send a signal to every other careless polluter that TRPA has adopted a policy to set aside and to disregard all restraints on discharges of toxic wastes from hazardous industrial activity in the Lake Tahoe Region.
  - Verizon’s proposed defilement of a national treasure, Lake Tahoe, will violate Articles V and VII of the Compact, TRPA’s own Regional Plan, the Clean Water Act,

the California Clean Water Quality Act, and various regulations of the California Water Quality Board. Article V(d) of the Compact states:

(d) The regional plan shall provide for attaining and maintaining Federal, State, or local air and water quality standards, whichever are strictest, in the respective portions of the region for which the standards are applicable. **The agency may, however, adopt air or water quality standards or control measures more stringent than the applicable State implementation plan or the applicable Federal, State, or local standards for the region, if it finds that such additional standards or control measures are necessary to achieve the purposes of this compact. (emphasis added).** Each element of the regional plan, where applicable shall, by ordinance, identify the means and time schedule by which air and water quality standards will be attained.

- The proposed permit is inconsistent with many other protective decisions of the California Regional Water Quality Control Board, Lahontan Region (LWB) prohibiting toxic discharges into Lake Tahoe. TRPA is legally obligated to uphold and apply these rigorous standards for dangerous projects such as the present one. While the LWB is deliberating on whether to allow a prohibited discharge, it posts its public record and specific findings for how the exemption criteria are met (see [https://www.waterboards.ca.gov/lahontan/board\\_decisions/adopted\\_orders/2021/](https://www.waterboards.ca.gov/lahontan/board_decisions/adopted_orders/2021/)) The TRPA has not followed this procedure in the present Verizon application.
- We are not dealing with an exemption in the present Verizon application, because no allowances can be made for solid waste discharges of this type. Thus, there are no permissive criteria, and no exemption can be granted. Moreover, the requisite findings can never be met by the TRPA Staff's proposed Condition 11, because the TRPA has not specified verifiable standards and procedures for "clean-up," monitoring, and tracking of wastes, or any rules governing how such wastes will be collected and disposed.

TRPA has concurrent jurisdiction with the Lohatan Water Board and must by law enforce water quality principles and standards. For this reason alone, Plaintiff's appeal must be granted.

- **Deficiencies and Errors of Law in the TRPA Staff Report.** The Staff Report offers several explanations for its recommendation to deny Petitioners' Appeal subject to Condition 11, that are erroneous as a matter of law.
- **Environmentally Dangerous Private Projects are Outside TRPA Authority.** The Staff Report alleges: *"The Tahoe Prosperity Center (TPC) is a private non-profit effort to bring reliable Broadband internet and cell service to the Lake Tahoe Region. The TPC's effort is not a plan of TRPA or any other government agency. As a result, there is no TRPA comprehensive action for which TRPA is required to do a plan level EIS."*

**Comment:** Taken on its face, the Staff Report will allow any private party or consortium to implement a plan—for example, massive logging throughout the

Tahoe Region—and absolve the TRPA of any authority to scrutinize the environmental impacts of such projects. The Connect Tahoe Wireless Plan is precisely the kind of all-embracing environmental catastrophe the Compact was designed to prevent.

However, in the present case, the proposed project is not a purely private project, as the Staff Report is alleging. The Tahoe Prosperity Center (TPC) is in reality a public/private joint venture in which the TRPA itself, including its Executive Director and Board members, are all playing a substantive and active role. Under the Staff Report's own standard, the TPC's Wireless Connected Tahoe Plan is a major project necessitating careful environmental assessment by an EIS **prepared by TRPA**, an inflexible legal obligation that cannot be delegated or entrusted to the wireless providers.

- **Federal Preemption.** The Staff Report contains several misstatements of law and contradictions.
  - On its face, the Staff Report contradicts itself. At first it seems to justify its position by referring to the 1996 Telecommunications Act (TCA), citing the limitations on State and local authority regarding radio frequency emissions. (In support, it cites *Cohen v. Apple* which is a cell phone case and not directly applicable to the proposed Verizon macro tower.) [1]
  - Yet, in the next paragraph, the Staff concedes that “the TRPA is created by an interstate compact, and is a creature of federal law, and the application of the TCA to its permitting process is not a matter of preemption.” The latter position is identical to that advanced by TRPA in its Motion to Dismiss to Plaintiff's First Amended Complaint, except there TRPA urged that the Compact was the “sole federal law” to be applied in the instant case.
  - This interpretation is preposterous. Neither the Staff or TRPA's Counsel has cited any authority to support the position that the Compact preempts other applicable federal laws, including the Endangered Species Act, the Americans with Disabilities Act, and Fair Housing Amendments Act, among other relevant laws, much less the U.S. and California State Constitution. There is no authority whatsoever for the proposition that the TRPA is a supra-constitutional agency with no constitutional constraints.
  - However, taking the Staff Report's explanation on its face, the Compact and its accompanying Regional Plan are directly on point. They establish TRPA jurisdiction—indeed impose a fiduciary Public Trust obligation—to review carefully and only thereafter to allow an enterprise, in this case the wireless industry's implementation of the Connected Tahoe Wireless Plan, to alter forever (and for the worse) the character of the entire Tahoe Region.
- **Tahoe-specific Impacts.** The Staff Report asserts: “TRPA has not received any proof of Tahoe-specific adverse impacts of RF and therefore need not reexamine the determinations of the FCC.” This statement is doubly absurd. The FCC does not opine

on the special environmental impacts of RF on Tahoe. That is not its job or responsibility. At the same time, Petitioners/plaintiffs have tendered volumes of studies confirming the specific adverse environmental impacts on the Tahoe Region of the Connected Tahoe Wireless Plan, as well as the water quality effects of the present environmentally disastrous project, which the TRPA Hearings Officer and the TRPA Staff have arbitrarily chosen to ignore. Similarly, the Staff is equally cavalier in its treatment of the fire risks of terpenes, again citing the FCC, which has no jurisdiction over local fire prevention and management, a subject recognized to be well within the jurisdiction of state and local governments.

- **Assessment of Viable Alternatives.** The Staff Report concedes, *“An alternative analysis is only appropriate if TRPA is conducting an Environmental Assessment or an EIS...No such analysis needs to be undertaken for an EIC.”* That is precisely the point. Under the August 13, 2021 decision of the DC Circuit Court of Appeals in *Environmental Health Trust, et al. v. FCC*, federal agencies and their equivalents like the TRPA do not function in a vacuum. They are governed and constrained by federal law (including the Administrative Procedure Act), a principle which the TRPA recognizes in the Compact. Under Article VII of the Compact and its own Regional Plan, TRPA is required to prepare a Comprehensive Programmatic Environmental Impact Statement (EIS) which will help to inform its Board and Staff, the public, the federal government, and California state government of the imminent catastrophe now looming before the Lake Tahoe Region. And the EIS process will uncover that there currently exists immediate available, faster, safer, more cybersecure, energy efficient, and climate change-friendly alternatives. [2]

**C. Response to Verizon Arguments.** Verizon’s position lines up perfectly with the Staff Report which strongly suggests Plaintiffs’ repeated concern that TRPA, including its Staff, Hearings Officers, and General Counsel, are not acting in good faith and independently, but rather as a joint venture and a pawn of the wireless telecom providers.

- **Assessment of the Proposed Verizon Project on its own Merits.** Petitioner/Plaintiffs do not dispute that TRPA has an obligation to assess Verizon’s individual proposal on its own merits. As Petitioner/Plaintiffs have repeatedly pointed out, Verizon’s proposed allowing of toxic hazardous microplastic waste onto Lake Tahoe lands is itself an impermissible act that TRPA has jurisdiction to prevent.
- In addition, however, TRPA’s responsibility to assess individual projects does not relieve the agency from also assessing carefully and preventing, an avoidable looming environmental catastrophe, if TRPA will simply comply with its EIS responsibilities under Article VII of the Compact and the Regional Plan.
- The special environmental hazards of the instant Verizon application, which will grant a green light to other hazardous waste dischargers, makes the point that Petitioners/Plaintiffs have argued since filing the First Amended Complaint: **TRPA cannot be allowed to avoid its Title VII and other obligations by the strongly**

**discouraged practice of piecemealing and segmentation.** The instant case is perhaps the best example of the concerns behind this policy. If TRPA allows Verizon to discharge toxic waste into Lake Tahoe, every other hazardous waste discharger will take this decision as a green light to repeat, mimic, and cite as TRPA authority for years to come.

- **The Approved Facility Will Not Pose a Toxic Waste Hazard.** This claim is obviously biased on a self-serving report by Verizon’s own “expert consultant.” TRPA itself is legally obligated to retain an independent, unbiased expert to advise on the overall environmental risks, and in particular the specific mitigation strategy proposed by Verizon and echoed by the Staff in Condition 11, which is plainly insufficient.
- **The Approved Facility Will Not Impact Endangered Species or Habitats.** Plaintiff/Petitioners have cited scientific evidence of these harms. TRPA is obligated to assess these risks and to make official science-based findings not only under the Compact as well as the Regional Plan, but also under federal laws which are not preempted by the Compact or the 1996 Telecommunications Act. Verizon’s reference to NEPA is irrelevant.
- **The Approved Facility is the Least Intrusive Means to Fill a Significant Gap in Service.** The proposed facility is actually the *most* intrusive means to fill a gap, even if a gap exists, as Verizon alleges. Verizon has not borne its burden to show the alleged “significant” gap cannot be resolved by other means, including alternative technologies, such as optical fiber to the premises. Verizon’s approach will create a fatal precedent, endanger the lives of residents, present especially serious risks to children who will play under the RF/EMF arc of the proposed macro tower, and increase significantly risk of cumulative hazardous waste pollution. If we brush aside all these risks, one might allow Verizon’s claim that the proposed disastrous project is the “least intrusive.”
- **The Approved Facility Will Not Increase Fire Risk.** The TRPA staff report addresses the evidence of increased fire risk (pg. 4) “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.” Fire Codes are based on risk assessments, trading off the perceived hazards against the cost of prevention. From an engineering perspective, to ignore the increased fire risk in reliance on national or weaker standards is to discount the tremendous public benefits now at risk in preserving Lake Tahoe, the over \$1 billion in real estate and other investments, and the extraordinary public service of the many of concerned residents who have devoted their time, energy, and financial resources in restoring and preserving Lake Tahoe. Given the devastation of the recent Caldor fire, effective fire prevention and management must be a highest TRPA priority. Fire risks must be given primary attention within an EIS, including the serious likelihood of disruption of cellular service during fire emergencies, as cited in the [2019 Utah State Hazard Mitigation Plan](#) [3].

**Conclusion.** There was a time between 1980—2000 after the establishment of the California/Nevada Compact when the TRPA was a fierce champion of Lake Tahoe, and fought to protect the nation’s Public Trust in this unique but fragile environmental

treasure. What has happened? What has caused TRPA to fall so far? Why is the TRPA Board surrendering its independence and stewardship to unelected Staff, or permitting itself to be manipulated by powerful self-serving wireless interests? The first duty of a physician under the Hippocratic Oath is: **do no harm!** The proposed Verizon Project will do irreversible harm. To avoid this harm, all the TRPA Board need do now is to pause, to properly inform itself, and then to reach its own fair conclusions. On its merits, Verizon's project must fail for it is a clear and foreseeable disaster in the making. By simply adhering to the law—federal, state, and Compact—TRPA can find a reasonable and balanced solution, and TRPA's Board can proudly take credit for that.

**Endnotes:**

1. The FCC itself has conceded in open court that it lacks any expertise on the health effects of RF/EMF emissions and must defer to the FDA, as the principal health agency in the country. However, neither the FDA nor its parent agency the Department of Health and Human Services has itself promulgated an Administrative Procedure Act (APA) compliant official policy, standards, or regulations concerning RF/EMF radiation safety. (See [ART/EHT Petition for Emergency Rulemaking](#))
2. The Staff Report urges that a consideration of alternatives is barred because plaintiffs did not make these same arguments during the 2015 Hearings on the Intelligent Transportation System Strategic Plan. This argument is specious on several grounds. First, the TPC Wireless Plan is a separate, although related enterprise. Second, new developments have come to light, in particular the fatal risks of hazardous and toxic waste discharges into Lake Tahoe. Third, new federal laws and state regulations relating to Critical National Infrastructure, broadband, and climate change policy, protective state ordinances, urgent concerns over cybersecurity and consumer privacy, and the rapid development of far more attractive innovative technologies. TRPA cannot place its head in the sand and refuse to recognize and be guided by more balanced alternatives, under the simplistic excuse that "times up."
3. "Communications infrastructure (e.g., internet, phone, television, radio) including emergency notifications can be interrupted if cell phone towers are damaged in wildfire incidents. This may impede evacuation notices if mobile phones and radio and television broadcasts are hindered. Damaged radio relay towers can also impact emergency responders' ability to communicate effectively." (2019 Utah State Hazard Mitigation Plan, pg. 276)

Appellants respectfully request the Board of Governors to grant their appeal.

Very truly yours,

/s/ Julian Gresser  
Julian Gresser