

From: David Chain
To: John Marshall; Cindy Gustafson
Cc: Maria Ambler; Havley Williamson; Shelly Aldean; Francisco Aguilar; Ashley Conrad-Savdah; jdiss.trpa@gmail.com; Belinda Faustinos; John Friedrich; Meghan.hays@gmail.com; Alexis Hill; Vince Hoenigman; Brooke Laine; Wesley Rice
Subject: TRPA – July 26, 2023-Hybrid Meeting – Public Comment
Date: Saturday, July 22, 2023 5:16:32 PM
Attachments: TRPA Public Comment–Cell Towers.pdf

Mr. Marshall,

If this is a TRPA "general counsel opinion," and not a "litigation position" chosen by the governing board, due apologies to G.B. Chairperson Gustafson; however, I strongly disagree with "your" unnatural—if not outright **frivolous**—interpretation of the law and doubt that your "interpretation" is not internally pressured by desired political outcomes stemming from the G.B.. Chairperson Gustafson certainly has the prerogative—and moral imperative—to condemn civil liberties violations by the TRPA. She apparently chooses not to do so. She *could have* also asked for the opinion of outside counsel, should she in protest actually wish for a second opinion. It is pathetic that she runs behind you for assistance breaking the law. It is also somewhat bizarre that TRPA's general counsel places such an egregiously unlawful position in email writing—but "excrement" apparently rolls downhill onto staff from the TRPA Governing Board. You have contemptfully ignored the compelling authorities mentioned in the footnote, and are violating (1) open meeting law; and (2) constitutionally guaranteed due process of law which those open meeting laws were actually designed to safeguard. I will also show the TRPA has a long history of publishing non-agenized written comment to the TRPA website and including them in the minutes. It is only when the comments are embarrassing to the TRPA that is officers and staff began invoking its newfound rule that it may expunge non-agenized comments from the published record.

First, my public comment which has a 3,000+ word endnote expressly addressing open meeting laws, squarely touches upon the May meeting's "[Agenda Item No VIII.B.1 – Review of Compact Open Meeting Law and Conflict of Interest Requirements](#)." My public comment WAS NOT merely submitted the "night prior" to the meeting. Your dual assertions to the contrary are **lies**. Even accepting *in arguendo* your frivolous claim that TRPA may suppress public comment "unrelated to any agenzitized topic," this comment must be disseminated along with the other public comments because it contains substantial content pertaining to TRPA open meeting law requirements.

Moreover, for the last couple of years, TRPA has been continually invoking its teleconference rules (*e.g.*):

<p>TAHOE REGIONAL PLANNING AGENCY GOVERNING BOARD NOTICE OF PUBLIC HEARINGS</p> <p>The Governing Board/Committee will be held at the Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV, Pursuant to TRPA Rules of Procedure, 2.16 Teleconference/Video Conference Meetings and Participation. Board members may appear in person or on Zoom. Members of the public may observe the meeting and submit comments in person at the above location or on Zoom. Details will be posted on the day of the meeting with a link to Zoom.</p> <p>NOTICE IS HEREBY GIVEN that at its regular meeting to be held on Wednesday, June 28, 2023, the Governing Board commencing at 9:30 a.m., at the Tahoe Regional Planning Agency, the Governing Board of the Tahoe Regional Planning Agency will conduct a public hearing on the following: 1) Proposed Amendments to Washoe County's Tahoe Area Plan to Allow Single Family Condominium Uses in Special Area 1 of the Incline Village Commercial Regulatory Zone (possible action).</p> <p>Julie W. Regan Executive Director Published: June 2, 2023</p>

Furthermore, TRPA has been using the TRPA website as its primary clearinghouse for meeting materials and has given notice that written comments will be part of the record (*e.g.*):

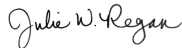
TAHOE REGIONAL PLANNING AGENCY (TRPA)
TAHOE METROPOLITAN PLANNING AGENCY
(TMPO) AND TRPA COMMITTEE MEETINGS

NOTICE IS HEREBY GIVEN that on **Wednesday, May 24, 2023**, commencing **no earlier than 10:30 a.m.**, at the **Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV**, the **Governing Board** of the Tahoe Regional Planning Agency will conduct its **regular business meeting**.

Pursuant to TRPA Rules of Procedure, 2.16 Teleconference/Video Conference Meetings and Participation, Board members may appear in person or on Zoom. Members of the public may observe the meeting and submit comments in person at the above location or on Zoom. Details will be posted on the day of the meeting with a link to Zoom.

To participate in any TRPA Governing Board or Committee meetings **please go to** the Calendar on **the <https://www.trpa.gov/homepage> and select the link for the current meeting**. Members of the public may also choose to listen to the meeting by dialing the phone number and access code posted on our website. For information on how to participate by phone, please see page 3 of this Agenda.

NOTICE IS FURTHER GIVEN that on **Wednesday, May 24, 2023**, commencing **no earlier than 9:15 a.m.**, at the **Tahoe Regional Planning Agency**, the **TRPA Regional Plan Implementation Committee** will meet. The agenda will be as follows: **1) Approval of Agenda; 2) Approval of Minutes; (Page 19) 3) Informational Presentation** on proposed amendments to the City of South Lake Tahoe's Tahoe Valley Area Plan and Tourist Core Area Plan that would expand housing opportunities and community equity by increasing density allowances and establishing minimum densities in town centers, allowing more housing types such as employee housing, shared housing, and group home facilities, improvements to residential design standards to help streamline project review, and policies to support town center revitalization using special events, coverage exemptions, and CFA policy clarifications. Additionally, amendments would increase consistency with recently amended TRPA regulations and state regulations regarding accessory dwelling units and density bonuses for affordable housing; **(Page 177 & 191) 4) Climate Smart Code Update; (Page 205) 5) Discussion** for a proposed regional definition and minimum standards for mixed-use development; **(Page 219) 6) Committee Member Comments** Chair Hoenigman, Vice Chair – Diss, Aldean, Gustafson, Hill, Settelmeyer **7) Public Interest Comments**



Julie W. Regan,
Executive Director

Members of the public may email written public comments to the Clerk to the Board, mambler@trpa.gov. All public comments should be as brief and concise as possible so that all who wish to participate may do so; testimony should not be repeated. The Chair of the Board shall have the discretion to set appropriate time allotments for individual speakers (3 minutes for individuals and group representatives as well as for the total time allotted to oral public comment for a specific agenda item). No extra time for participants will be permitted by the ceding of time to others. Written comments of any length are always welcome. In the interest of efficient meeting management, the Chairperson reserves the right to limit the duration of each public comment period to a total of 1 hour. **All written comments will be included as part of the public record.** Public comment will be taken for each appropriate item at the time the agenda item is heard and a general public comment period will be provided at the end of the meeting for all other comments.

This clearly invokes [TRPA rule of Procedure 2.16.6](#):

Article 2: GOVERNING BOARD MEETINGS

2.16 Teleconference/ Videoconference Meetings and Participation

2.16. TELECONFERENCE/ VIDEOCONFERENCE MEETINGS AND PARTICIPATION

2.16.6. All votes set forth in subsection 2.4.4 above and taken at a teleconferenced meeting shall be by roll call. All other votes may be taken by voice vote. Any member participating by proper teleconference shall be counted toward a quorum. Agency **materials that are to be considered at the meeting shall be made available online contemporaneously with presentation to the Governing Board members.** Any known interruption in the teleconference broadcast at a teleconference location that results in loss of a quorum shall result in the suspension of the teleconference until the broadcast is restored.

All TRPA materials—including contractor documents and public comment—which have been received and accepted in its custody, ownership, or possession, are agency materials (c.f., [PUBLIC LAW 96-551 – DEC. 19, 1980, ARTICLE III \(i\); Rules of Procedure Art. 15](#)). Therefore, all public comments timely received by the TRPA for consideration at the meeting, shall be made available online contemporaneously with all other meeting materials.

Moreover, [PUBLIC LAW 96-551 – DEC. 19, 1980, ARTICLE III \(d\)](#) promulgates that "[a]ll meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held." California and Nevada law require that agencies allow comments which might be precisely characterized as "unrelated to any agendized topic" ([CA Government Code § 54954.3\(a\)&\(c\)](#)) ("Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body..."); [N.R.S. § 241.020\(3\)\(d\)\(3\)](#) ("the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting").

As you ought to know, under the Constitutions of the United States and the States of California and Nevada, all citizens are granted **equal protection** under the law. However, you purportedly believe TRPA has the right to unequally cull certain politically convenient public comments for publication to its website and to suppress public comment "unrelated to any agendized topic" [sic]. That is, that published and suppressed comments are some how **"separate, but equal."** "[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved." ([Plessy v. Ferguson](#), 163 U.S. 537, [559](#) (1896) (Harlan, J. Dissenting)). You should also know that **separate but equal is not equal** ([Brown v. Board of Education of Topeka](#), 347 U.S. 483, [495](#) (1954) ("the doctrine of 'separate but equal' has no place... Separat[ion is] inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment")).

The TRPA has purposefully modified its rules, practices, and customs multiple times in order to illegally suppress certain types of public commentary and grievance petitions from the published official TRPA meeting record. TRPA illegally removed public comment from the beginning of its meetings in violation of the Nevada Law/TRPA Compact circa May 2020 in retaliation to public comments critical of TRPA inappropriate permitting of cell towers (compare [March 2020 meeting agenda](#) with [April 2020 meeting agenda](#)).

TAHOE REGIONAL PLANNING AGENCY (TRPA)
TAHOE METROPOLITAN PLANNING AGENCY (TMPO)
AND TRPA COMMITTEE MEETINGS

NOTICE IS HEREBY GIVEN that on **Wednesday, March 25, 2020** commencing **no earlier than 9:00 a.m.**, at the **Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV** the **Governing Board** of the Tahoe Regional Planning Agency will conduct its regular meeting. [Please go to **www.trpa.org**](#) for instructions on how to participate. TRPA sincerely appreciates the patience and understanding of everyone concerned as we make accommodations to conduct business using best practices to protect public health. The agenda is attached hereto and made part of this notice.

NOTICE IS FURTHER GIVEN that on **Wednesday, March 25, 2020**, commencing at **8:30 a.m.**, at the **Tahoe Regional Planning Agency, the TRPA Regional Plan Implementation Committee** will meet. The agenda will be as follows: **1) Public Interest Comments; 2) Approval of Agenda; 3) Approval of Minutes; 4) Discussion and possible direction on modifications to the VMT Threshold Update workplan; (Page 113) 5) Committee Member Comments; Chair – Vacant, Vice Chair – Bruce, Aldean, Laine, Lawrence, Gustafson, Yeates; 6) Public Interest Comments**

March 18, 2020



Joanne S. Marchetta,
Executive Director

In response to cell tower public comments, beginning in April 2020, the comments section was illegally removed from the posted meeting agenda. Agenda items must be clear and complete (**NRS 241.020(2)(d)(1)**). A higher degree of specificity is necessary for topics of substantial public interest (*Sandoval v. Board of Regents*, 119 Nev. 148 (2003)).

TAHOE REGIONAL PLANNING AGENCY (TRPA)
TAHOE METROPOLITAN PLANNING AGENCY (TMPO)
AND TRPA COMMITTEE MEETINGS

NOTICE IS HEREBY GIVEN that on **Wednesday, April 22, 2020** commencing at **no earlier than 10:15 a.m.**, via **GoToWebinar**, the **Governing Board** of the Tahoe Regional Planning Agency will conduct its regular meeting. Pursuant to the State of California's Executive Order No. N-29-20 and the State of Nevada's Declaration of Emergency Directive 006, the TRPA meeting will not be physically open to the public and all Governing Board Members will be participating remotely via GoToWebinar. Please go to [www.trpa.org](#) for more information on how to participate. TRPA sincerely appreciates the patience and understanding of everyone concerned as we make accommodations to conduct business using best practices to protect public health. The agenda is attached hereto and made part of this notice.

NOTICE IS FURTHER GIVEN that on **Wednesday, April 22, 2020**, commencing at **9:30 a.m.**, via **GoToWebinar**, the **TRPA Regional Plan Implementation Committee** will meet. The agenda will be as follows: **1) Approval of Agenda; 2) Approval of Minutes; 3) Nomination and Appointment of Chair; 4) Discussion and possible recommendation for Tourist Core Area Plan, Pioneer/Ski Run Plan Area Statement 092 and Lakeview Heights Plan Area Statement 085 Boundary Line Amendments; (Page 571) 5) Update on the project level transportation impact assessment and Air Quality Mitigation Fee; (Page 581) 6) Committee Member Comments; Chair – Open, Vice Chair – Bruce, Aldean, Laine, Lawrence, Gustafson, Yeates.**

April 15, 2020



Joanne S. Marchetta,
Executive Director

In an egregious attempt to chill critical public commentary, this item was completely omitted from the agenda for several months until it was partially added again in [July 2020](#):

TAHOE REGIONAL PLANNING AGENCY (TRPA)
TAHOE METROPOLITAN PLANNING AGENCY (TMPO)
AND TRPA COMMITTEE MEETINGS

NOTICE IS HEREBY GIVEN that on **Wednesday, July 22, 2020** commencing **no earlier than 10:15 a.m.**, via **GoToWebinar**, the Governing Board of the Tahoe Regional Planning Agency will conduct its regular meeting. Pursuant to the State of California's Executive Order No. N-29-20 and the State of Nevada's Declaration of Emergency Directive 006, the TRPA meeting will not be physically open to the public and all Governing Board Members will be participating remotely via GoToWebinar. Please go to [www.trpa.org](#) for information on how to participate. TRPA sincerely appreciates the patience and understanding of everyone concerned as we make accommodations to conduct business using best practices to protect public health. The agenda is attached hereto and made part of this notice.

NOTICE IS FURTHER GIVEN that on **Wednesday, July 22, 2020**, commencing **9:15 a.m.**, via **GoToWebinar**, the **TRPA Operations & Governance Committee** will meet. The agenda will be as follows: **1) Approval of Agenda; 2) Recommend approval for release of Placer County Water Quality Interest Mitigation Funds (\$10,000), and Air Quality Interest Mitigation Funds (\$50,000) for Phase 1 of the North Tahoe Recreational Access Plan; (Page 1) 3) Recommend approval for release of City of South Lake Tahoe Air Quality Mitigation Funds (\$35,000) for complete reconstruction of a deteriorated bike trail on the Emerald Bay Road corridor; (Page 7) 4) Recommend approval for Adoption of Amendment No. 8 to the 2019 Federal Transportation Improvement Program; (Page 127) 5) Discussion, Direction, and Possible Recommendation for Nevada Division of State Land's Request for Disbursement of Excess Coverage Mitigation Fund Balance (\$2,204,709.40); (Page 11) 6) Quarterly Treasurers' report; 7) Upcoming Topics; 8) Public Interest Comments; 9) Committee Member Comments; Chair – Aldean, Vice Chair – Gustafson, Beyer, Cashman, Cegavske, Hicks**

July 15, 2020



Joanne S. Marchetta,
Executive Director

It is illegal for TRPA to refuse to holding public comment at the beginning of its meeting whereas Nevada open meeting law requires that "[c]omments by the general public must be taken: **At the beginning of the meeting before any items on which action may be taken are heard by the public body** and again before the adjournment of the meeting" (**N.R.S. § 241.020(3)(d)(3)(1)**). It is even more illegal to do so in retaliation (*Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 867 (9th Cir. 2016) ("A plaintiff may bring a Section 1983 claim alleging that public officials, acting in their official capacity, took action with the intent to retaliate against, obstruct, or chill the plaintiff's First Amendment rights. To bring a First Amendment retaliation claim, the plaintiff must allege that (1) it engaged in constitutionally protected activity; (2) the defendant's actions would 'chill a person of ordinary firmness' from continuing to engage in the protected activity; and (3) the protected activity was a substantial or motivating factor in the defendant's conduct—i.e., that there was a nexus between the defendant's actions and an intent to chill speech. Further, to prevail on such a claim, a plaintiff need only show that the defendant 'intended to interfere' with the plaintiff's First Amendment rights and that it suffered some injury as a result; the plaintiff is not required to demonstrate that its speech was actually suppressed or inhibited").

The TRPA's suppression of public commentary satisfies all of the aforementioned criteria. Abridging the freedom of speech, or to petition the government for a redress of grievances violates the First Amendment of the Constitution. The suppression of the opportunity to present reasons why the proposed action should or should not be

taken and the right to present evidence violates the Fifth and Fourteenth Amendments. The Agency's repeated violations would 'chill a person of ordinary firmness' from continuing to engage exercising these rights. There is a clearly connection demonstrated above between anti-cell tower public comments and the illegal changes in rules and practices narrowing and prohibiting public comment at agency GB meetings. The rule changes were blatantly responsive to public comments beginning in late winter 2020.

I will reiterate that the chilling of witness testimony or other suppression of evidence is a form of constitutional violation (see, *Mellen v. Winn*, 900 F.3d 1085, 1096 (9th Cir. 2018); *Tennison v. City & Cnty. of S.F.*, 570 F.3d 1078, 1087, 1089 (9th Cir. 2009); see also, *Carrillo v. Cnty. of L.A.*, 798 F.3d 1210, 1219 (9th Cir. 2015); cf., *Park v. Thompson*, 851 F.3d 910 (9th Cir. 2017); *Brady v. Maryland*, 373 U.S. 83 (1963) (government withholding exculpatory evidence violates due process "where the evidence is material"). In substance, the viewpoint discrimination and "chilling of witness testimony" in administrative hearings is precisely what you are doing when picking and choosing content to publish or not publish to the TRPA meeting's website. Nevada and California open law and the US constitution clearly promulgate that an agency may not discriminate against viewpoint (CA Government Code § 54954.3(a)&(c) ("The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body."); *NRS § 241.020(3)(d)(7)* ("Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint").

As I have previously mentioned, due process of law, *inter alia*, requires that a tribunal allow all parties and public attendance to an opportunity to be heard, an opportunity to know all opposing evidence, and that it **prepare a record of the evidence presented**. By suppressing certain viewpoints from the online published record, which TRPA officials "arbitrarily and capriciously" find objectionable, its officers violate all three of the aforementioned due process essentials. The TRPA certainly presents its website to the public as representing the whole hearing record and does not bring any awareness that some comment may be culled for targeted suppression sans a special public records request.

Moreover, both California and Nevada have promulgated "open meeting" statutes which set bright line rules in order to heuristically prevent government agencies from inadvertently violating this body of constitutional law. Among these rules is the requirement for an opportunity for public comment at the beginning of the TRPA meeting (N.R.S. § 241.020(3)(d)(3)(1) requires that meetings have "Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken... **At the beginning of the meeting before any items on which action may be taken are heard by the public body** and again **before the adjournment of the meeting**), and that a government body "shall not prohibit public criticism" against the agency (*CA. Gov. Code § 54954.3(c)*).

As long as an agency has the awesome power to deprive the private interests of life, liberty, or property, the suppression of any public commentary from the official published record can—and often will—fall short of adequate due process protection. Often the first step in due process is the petitioning the government of a redress of grievances. Due process of law abhors asymmetrical access to information—e.g., evidence, arguments, and other persuasive data. Transparent public hearings foster confidence and help to assure the accuracy of the evidence offered (3 W. BLACKSTONE, COMMENTARIES *373; 6 J. WIGMORE, EVIDENCE § 1834, at 335 (3d ed. 1940)). You cannot have a truly open hearing if the public does not have unfettered access to the arguments and evidence presented. The interest of the public in ensuring that the government functions fairly, provides for having open hearings (*The Right to an Open Administrative Hearing*, 53 B.U.L. Rev. 899 (1973)). The constitutional due process right to a public hearing dovetails with the First Amendment whereas, the "right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all" (*supra*, *New York Times Co. v. Sullivan*, at 270). "[T]he path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies" (*id*).

Contrary TRPA practices to systemically rig an egregiously unlevel playing field towards succumbing to an authoritarian outcome are "conscious shocking" in the constitutional sense (*County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)). Due process requires an impartial tribunal (*Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) ("impartial decision maker is essential"); *Ward v. Village of Monroeville*, 409 U.S. 57, 62-63 (1972) (holding litigant is "entitled to a neutral and detached judge in the first instance"); *Arnett v. Kennedy*, 416 U.S. 134, 197 (1974) (the right to an impartial decisionmaker is required by due process); See also, *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950)). The cherry-picking of public commentary during the TRPA tribunals which suits the agency's purposes and the simultaneous suppression of public comments which are unfavorable, is the epitome of bias.

A fundamental purpose in soliciting public comments, is a *bona fide* truthfinding endeavor, so that no person is wrongfully deprived of life, liberty, or property and that the government has the all the information needed to make the best decisions possible. Due process compels the TRPA to publish its public commentary because: (1) private interests of life, liberty, or property can be gravely affected by the ordinary and ongoing activities of the TRPA; and (2) the risk that TRPA officials will not read or act on public commentary that is suppress from the published record; (3) that publishing "non-agendized" public commentary to the complete official record—online—is a trivial safeguard to implement (*Mathews v. Eldridge*, 424 U.S. 319, 335, 344 (1976) ("[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail"; "[P]rocedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions"). After all, due process of law is conferred as a constitutional guarantee not a by the grace of TRPA officials (*Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985) ("[T]he Due Process Clause provides that certain substantive rights — life, liberty, and property — cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology. "Property" cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process "is conferred, not by legislative grace, but by constitutional guarantee.")).

In the instant case here, I allege there is a deprivation to life, liberty, and property from the placement of cell towers, and am in-fact petitioning the TRPA for sweeping policy changes as redress for my grievances. The TRPA deliberately suppressing this grievance from the meeting record.

On 2023-06-01 12:19, John Marshall wrote:

Mr. Chain:

No law (including Cal. Gov. Code § 54957.5(a)) requires TRPA (or Chair Gustafson) to post on its website a comment submitted to the agency under the general public comment period at 9:35 p.m. the night prior to a Governing Board meeting unrelated to any agendized topic. Your May 23, 2023 comment is available as a public record to anybody who requests it and will be retained in the public record for the May 24, 2023 meeting.

John L. Marshall

General Counsel

(775) 303-4882 · jmarshall@trpa.gov



From: David Chain <david.chain@barmail.ch>

Sent: Wednesday, May 24, 2023 4:25 PM

To: Sophie Fox <sfox@placer.ca.gov>; cindygustafson@placer.ca.gov

Subject: [EXTERNAL] URGENT: Litigation notice against Supervisor Gustafson

URGENT!

Ms. Gustafson and Ms. Fox:

If you do not add my public comment to the TRPA meeting record as accessible from the website, I will be **suing Cindy Gustafson** in federal court for damages for her repeated criminal violation of open meeting laws and violation of the constitutional right to due process of law. All public comments submitted to the TRPA must be publicly disseminated and it is illegal to "deprive the public of this information" (CA. Gov. Code §§ 54957.5(a) & 54959). My public comment was submitted to a

quorum of the TRPA governing body within 72 hours before the meeting, but it is being purposefully suppressed from the GB meetings website. TRPA Compact Article III(d) promulgates that "All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held." Assuming in *arguendo* that California law were to impose a lesser requirement than Nevada law, a violation of lesser restrictive California law must still result in violation of the compact.

It is established that the chilling of witness testimony or other suppression of evidence is a form of constitutional violation (see, *Mellen v. Winn*, 900 F.3d 1085, 1096 (9th Cir. 2018); *Tennison v. City & Cnty. of S.F.*, 570 F.3d 1078, 1087, 1089 (9th Cir. 2009); see also, *Carrillo v. Cnty. of L.A.*, 798 F.3d 1210, 1219 (9th Cir. 2015); cf., *Park v. Thompson*, 851 F.3d 910 (9th Cir. 2017)).

Due process of law under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution—**supreme over all state law**—have the requirements that a tribunal allow all parties and public attendance to an opportunity to be heard, an opportunity to know all opposing evidence, and that it prepare a record of the evidence presented (*Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313, 314 (1950) (requisite of due process of law is the opportunity to be heard); *Greene v. McElroy*, 360 U.S. 474, 946-947 (1959) (the right to be confronted with evidence is protected in all types of cases where administrative and regulatory actions were under scrutiny); *Goldberg v. Kelly*, 397 U.S. 254, 269-70 (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses"). A transcript being made tends to restrain abuses by hearing officers and is almost essential if there is to be judicial review (Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267, 1282-87, 1291-94 (1975)). The full record of public speech before the governing body is essential towards serving these purposes. Pursuant to the federal "**Constitutional-Doubt Canon**"—and to a lesser extent California Constitution, Art. I, Sections 2 & 3, **Civil Code § 3541**, & **Civil Procedure § 1866**—the Ralph M. Brown Act may not be construed to illegally abridge due process and free speech protections guaranteed by the federal and state constitutions. Procedural due process violations may occur by either restraining the public from making protected speech or by subsequently restraining free speech which actually has occurred from then being entered into the tribunal's record (*United States v. Buckland*, 289 F.3d 558, 564 (9th Cir. 2002) ("every reasonable construction must be resorted to, in order to save a statute from unconstitutionality") (quoting *Hooper v. California*, 155 U.S. 648, 657 (1895)); *INS v. St. Cyr*, 533 U.S. 289, 299-300 n.12 (2001); see also, *Miller v. French*, 530 U.S. 327, 336 (2000) (instructing courts to avoid "constitutionally doubtful constructions"). The TRPA governing board, after all, is a quasi-judicial body—who periodically meets during a **designated public forum**—which must accept evidence pertaining to all items within its jurisdiction during any regular meeting occurring before a final decision has been rendered. Whereas governing board members act in a quasi-judicial capacity similar to judges, they must be neutral and unbiased (*Petrovich Development Company, LLC v. City of Sacramento*, 48 Cal.App.5th 963, 973 (2020)). Due process requires an impartial tribunal (*supra*, *Goldberg v. Kelly*, at 271 ("impartial decision maker is essential"); *Arnett v. Kennedy*, 416 U.S. 134, 197 (1974) (the right to an impartial decisionmaker is required by due process); *Ward v. Village of Monroeville*, 409 U.S. 57, 62-63 (1972) (holding litigant is "entitled to a neutral and detached judge in the first instance"). See also, *supra*, *Mullane v. Central Hanover Tr. Co.*, at 314).

Due process of law abhors asymmetrical access to information—e.g., evidence, arguments, and other persuasive data. As soon as the TRPA sets the rules of the game such that certain types of information can be broadcast amongst one party and the GB for a quasi-judicial hearing, but be withheld from an adversarial party, this unfair asymmetric advantage will be purposefully exploited. A sagely observant party will channel lines of persuasive rhetoric based upon data that will be prescriptively suppressed for the other party and thus cannot be refuted. If the rule were that *ex parte* communications to a quorum of the governing body could be suppressed, then one party can use such practice to make unlimited dubious claims and have little worry about the adversarial party's confrontation of any falsehoods. The other party could never even identify dubious rhetoric in order to expose or prove such narrative false. There is already "conscience shocking" precedent of a large astroturfing campaign by the Tahoe Prosperity Center before the TRPA, and the ability to be able to disprove disinformation has become especially important in our increasingly post-factual world. Transparent public hearings foster confidence and help to assure the accuracy of the evidence offered (3 W. BLACKSTONE, COMMENTARIES *373; 6 J. WIGMORE, EVIDENCE § 1834, at 335 (3d ed. 1940)). You cannot have a truly open hearing if the public does not have unfettered access to the arguments and evidence presented. The interest of the public in ensuring that the government functions fairly, provides for having open hearings (*The Right to an Open Administrative Hearing*, 53 B.U.L. Rev. 899 (1973)). The constitutional due process right to a public hearing dovetails with the First Amendment whereas, the "right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all" (*supra*, *New York Times Co. v. Sullivan*, at 270). "[T]he path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies" (*id.*) (*supra*, TRPA practices to systemically rig an egregiously unlevel playing field towards succumbing to an authoritarian outcome are "conscience shocking" in the constitutional sense (cf., *supra*, *County of Sacramento v. Lewis*, at 846). It is well-established that the chilling of witness testimony or other suppression of evidence is a form of constitutional violation (see, *Mellen v. Winn*, 900 F.3d 1085, 1096 (9th Cir. 2018); *Tennison v. City & Cnty. of S.F.*, 570 F.3d 1078, 1087, 1089 (9th Cir. 2009); see also, *Carrillo v. Cnty. of L.A.*, 798 F.3d 1210, 1219 (9th Cir. 2015); cf., *Park v. Thompson*, 851 F.3d 910 (9th Cir. 2017)).

It is well-established that **County Officials can be held liable for knowing about but failing to prevent constitutional violations** (*Reynaga Hernandez v. Skinner*, 969 F.3d 930, 941-42 (9th Cir. 2020) (An actor may be deemed to have caused a constitutional violation under the "integral-participant doctrine," if the defendant knew about and acquiesced in the constitutionally defective conduct as part of a common plan with those whose conduct constituted the violation)). The TRPA itself can also be held liable (*Monell v. Department of Social Services*, 436 U.S. 658, 691-92 (1978) (when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983); *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (when government policymakers are on actual or constructive notice of government's programmatic violation of citizens' constitutional rights, the government may be deemed deliberately indifferent)). It is well settled that a "person" subject to liability can be an individual sued in an individual capacity (see *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (*en banc*)) or in an official capacity (see, *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013)). A "person" subject to liability can also be a local governing body (see, *Waggy v. Spokane County*, 594 F.3d 707, 713 (9th Cir. 2010)). This general doctrine applies specifically to First Amendment violations (*Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 867 (9th Cir. 2016) ("A plaintiff may bring a Section 1983 claim alleging that public officials, acting in their official capacity, took action with the intent to retaliate against, obstruct, or chill the plaintiff's First Amendment rights. To bring a First Amendment retaliation claim, the plaintiff must allege that (1) it engaged in constitutionally protected activity; (2) the defendant's actions would 'chill a person of ordinary firmness' from continuing to engage in the protected activity; and (3) the protected activity was a substantial or motivating factor in the defendant's conduct—i.e., that there was a nexus between the defendant's actions and an intent to chill speech. Further, to prevail on such a claim, a plaintiff need only show that the defendant 'intended to interfere' with the plaintiff's First Amendment rights and that it suffered some injury as a result; the plaintiff is not required to demonstrate that its speech was actually suppressed or inhibited"). An institutional defendant, such as a municipality, is not entitled to qualified immunity (see, *Owen v. Independence*, 445 U.S. 622, 638 (1980) (holding that "municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983")). Even a private party involved in conspiracy to deprive such rights with a government official may, even though not himself official of the government, be liable as well (*Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970)).

Gustafson is deliberately indifferent to this ongoing constitutional violation. See footnote of my public comment. Please correct this issue ASAP or Gustafson will be publicly branded by the federal district court as an unlawful actor and be forced to pay damages in for her blatant lawless actions.

Sincerely,

David Chain

On 2023-05-24 15:30, Sophie Fox wrote:

Thank you - Supervisor Gustafson received your comment.

Sophie Fox

District 5 Chief of Staff

From: David Chain < david.chain@barmail.ch >

Sent: Tuesday, May 23, 2023 9:35 PM

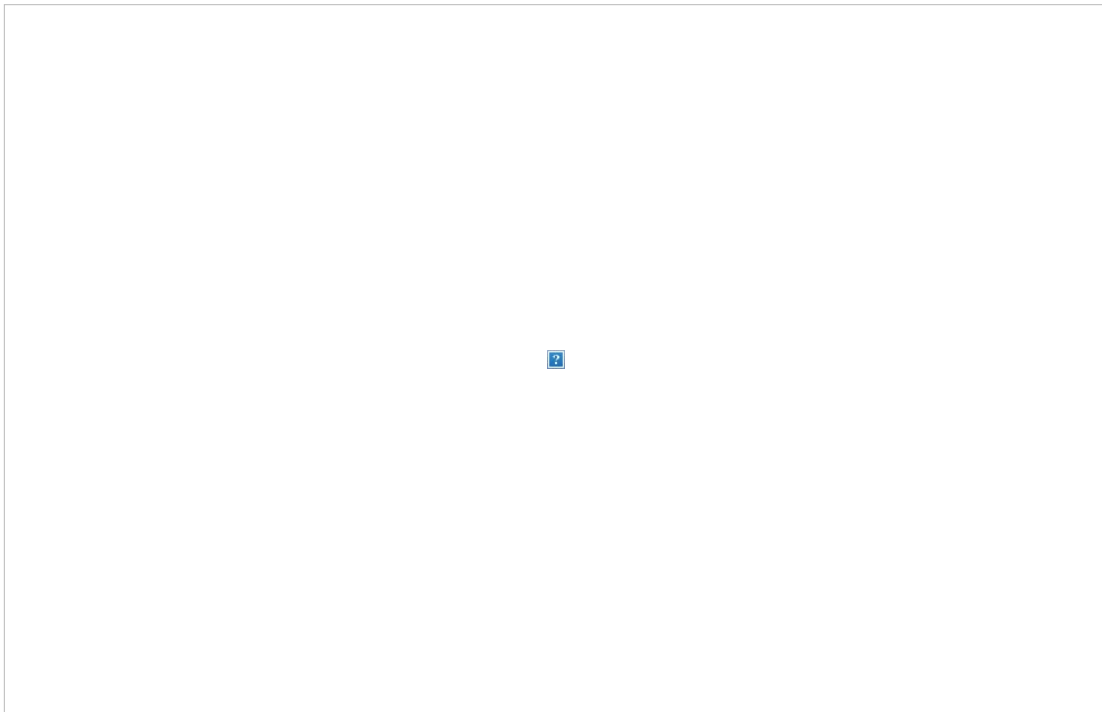
To: Cindy Gustafson < cindygustafson@placer.ca.gov >; hayley.a.williamson@gmail.com; shellyaldean@gmail.com; cisco@sos.nv.gov; ashleyc@alumni.princeton.edu; jdiss.trpa@gmail.com; belindafastinos@gmail.com; jfriedrich@cityofsilt.us; ajhicks@mcdonaldcarano.com; AHill@washoeconomy.us; vhoenigman@yahoo.com; jsettelmeyer@dcnr.nv.gov; BOSFive@edcgo.us; wrice@douglasnv.us; trpa@trpa.gov; Julie Regan < jregan@trpa.gov >

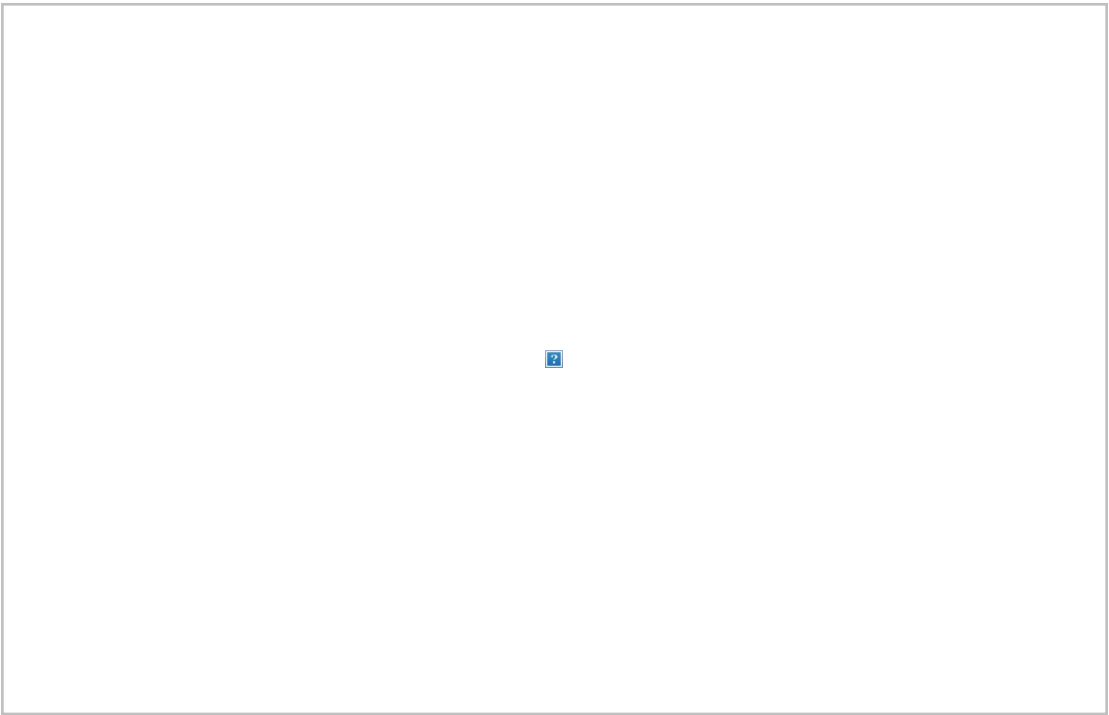
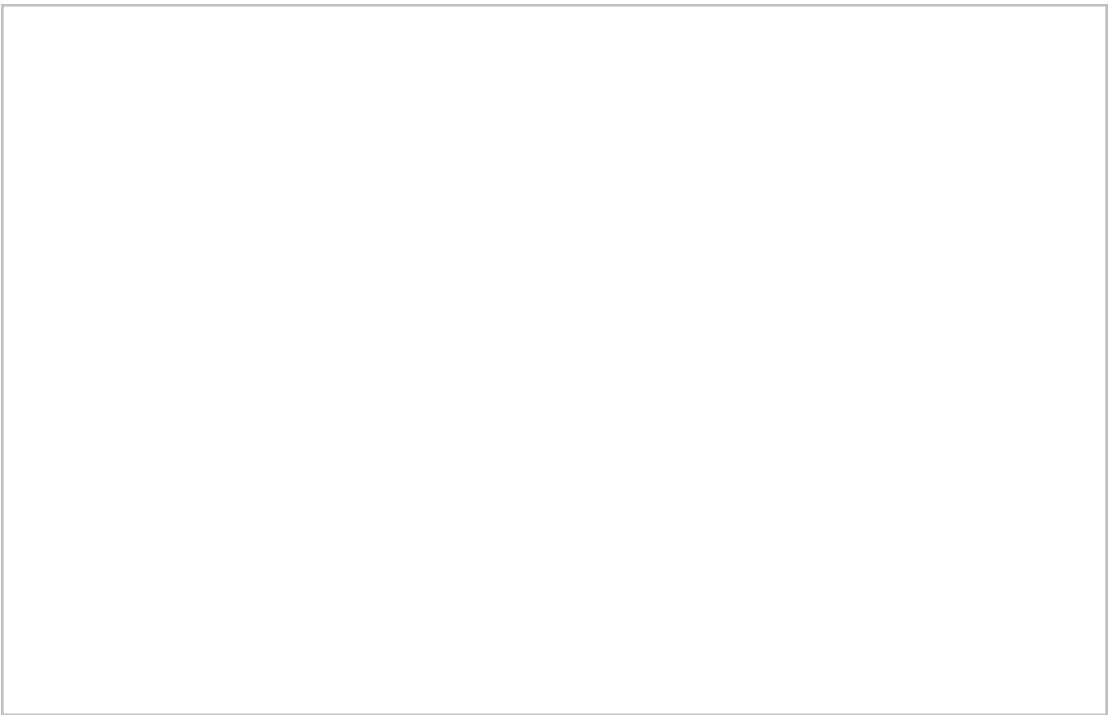
Cc: Cristi Creegan < ccreegan@cityofsilt.us >; Cody Bass < cbass@cityofsilt.us >; Scott Robbins < srobbins@cityofsilt.us >; Tamara Wallace < twallace@cityofsilt.us >; Joe Irvin < jirvin@cityofsilt.us >; Lindsey Baker < lbaker@cityofsilt.us >; Sheree Juarez < sjuarez@cityofsilt.us >; sletton@cityofsilt.us; Heather Leyn Stroud < hstroud@cityofsilt.us >; Daniel Bardzell < dbardzell@cityofsilt.us >; nwieczorek@cityofsilt.us; gfeiger@cityofsilt.us; showard@cityofsilt.us; kroberts@cityofsilt.us; nspeal@cityofsilt.us; Marja Ambler < mambler@trpa.gov >; John Ladue Marshall < jmarshall@trpa.gov >; Katherine Huston (Hangeland) < khuston@trpa.gov >; Wendy Jepson < wjepson@trpa.gov >; jself@trpa.gov; Bridget Cornell < bcornell@trpa.org >; Ken Kasman < kkasman@trpa.gov >; Devin Middlebrook < dmiddlebrook@trpa.gov >; Rep. Kevin Kiley < opencongress.org >; Daniel Cressy < daniel.cressy@usda.gov >; Vicki Lankford < vicki.lankford@usda.gov >; Danelle Harrison < danelle.harrison@usda.gov >; Erick Walker < erick.walker@usda.gov >; Charles Clark < charles.h.clark@usda.gov >; Kimberly Felton

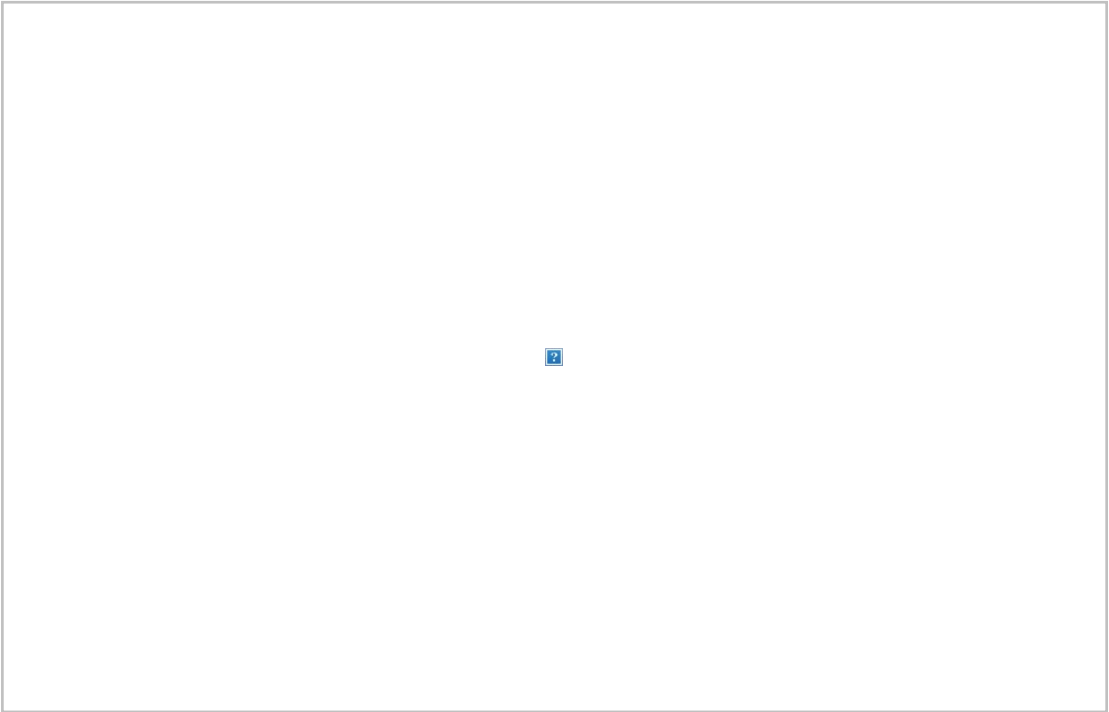
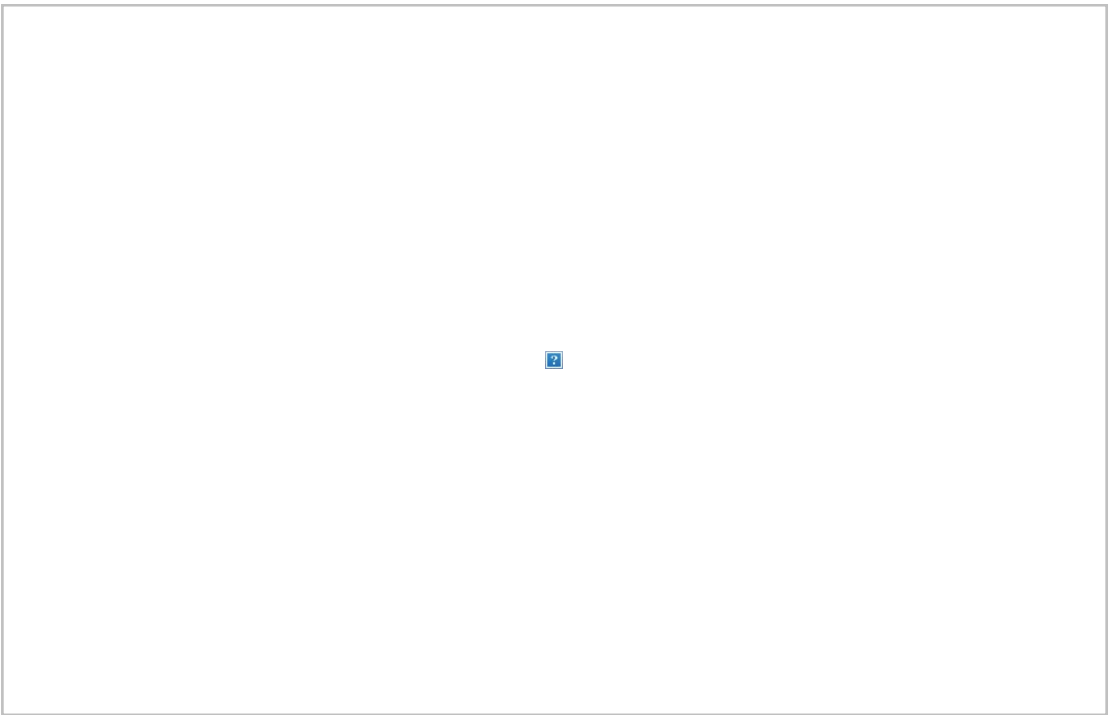
<Kimberly.felton@usda.gov>; Lisa Herron <lisa.herron@usda.gov>; FCC Litigation Notice <LitigationNotice@fcc.gov>; Dan P. Nubel <DNubel@ag.nv.gov>; California Attorney General <CEQA@doj.ca.gov>; AFord@ag.nv.gov
Subject: [EXTERNAL] TRPA Governing Board Meeting Public Comment {May 24 2023 TRPA GB meeting}

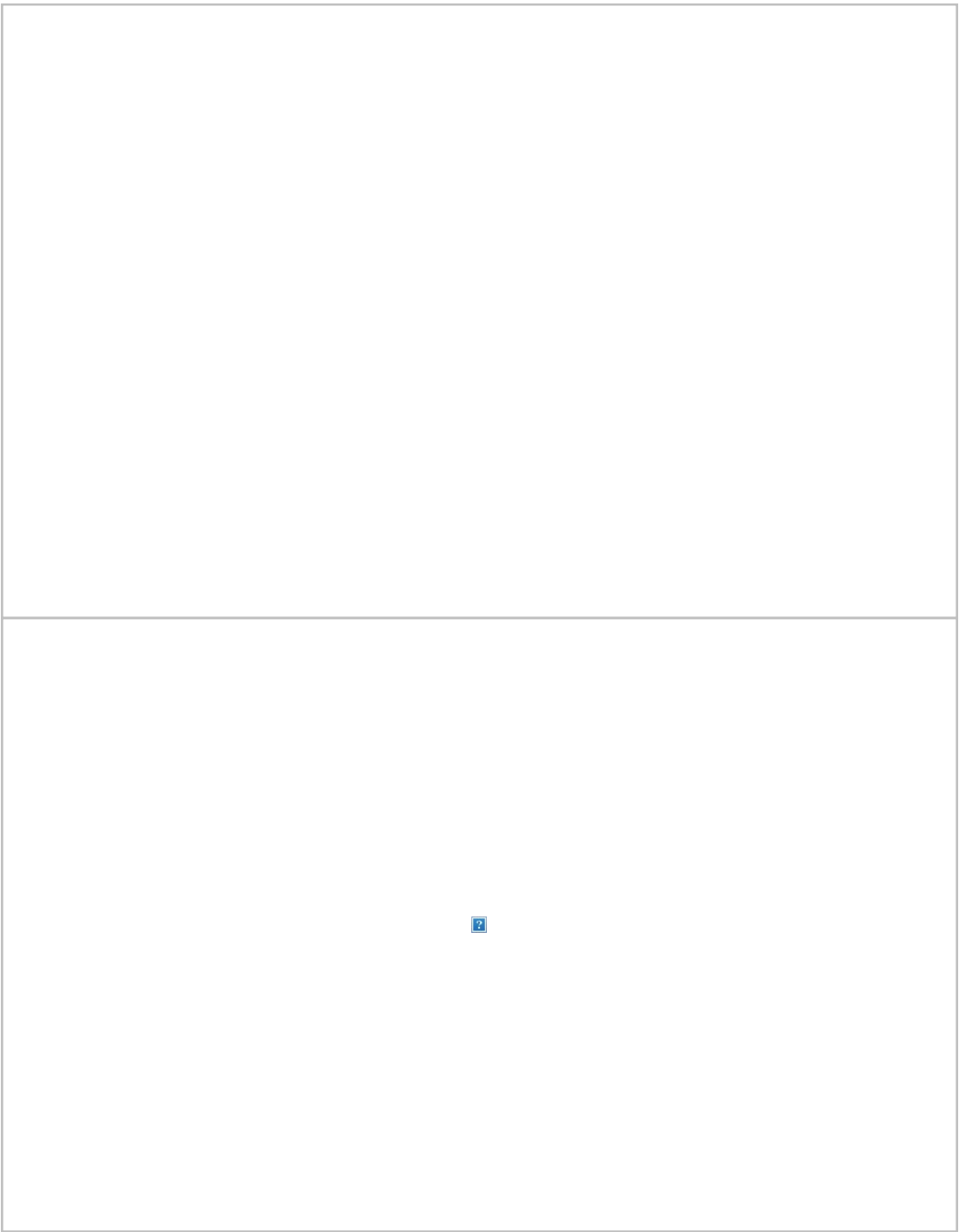
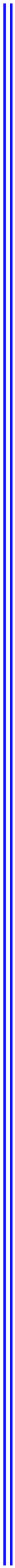
Dear TRPA Governing Board,

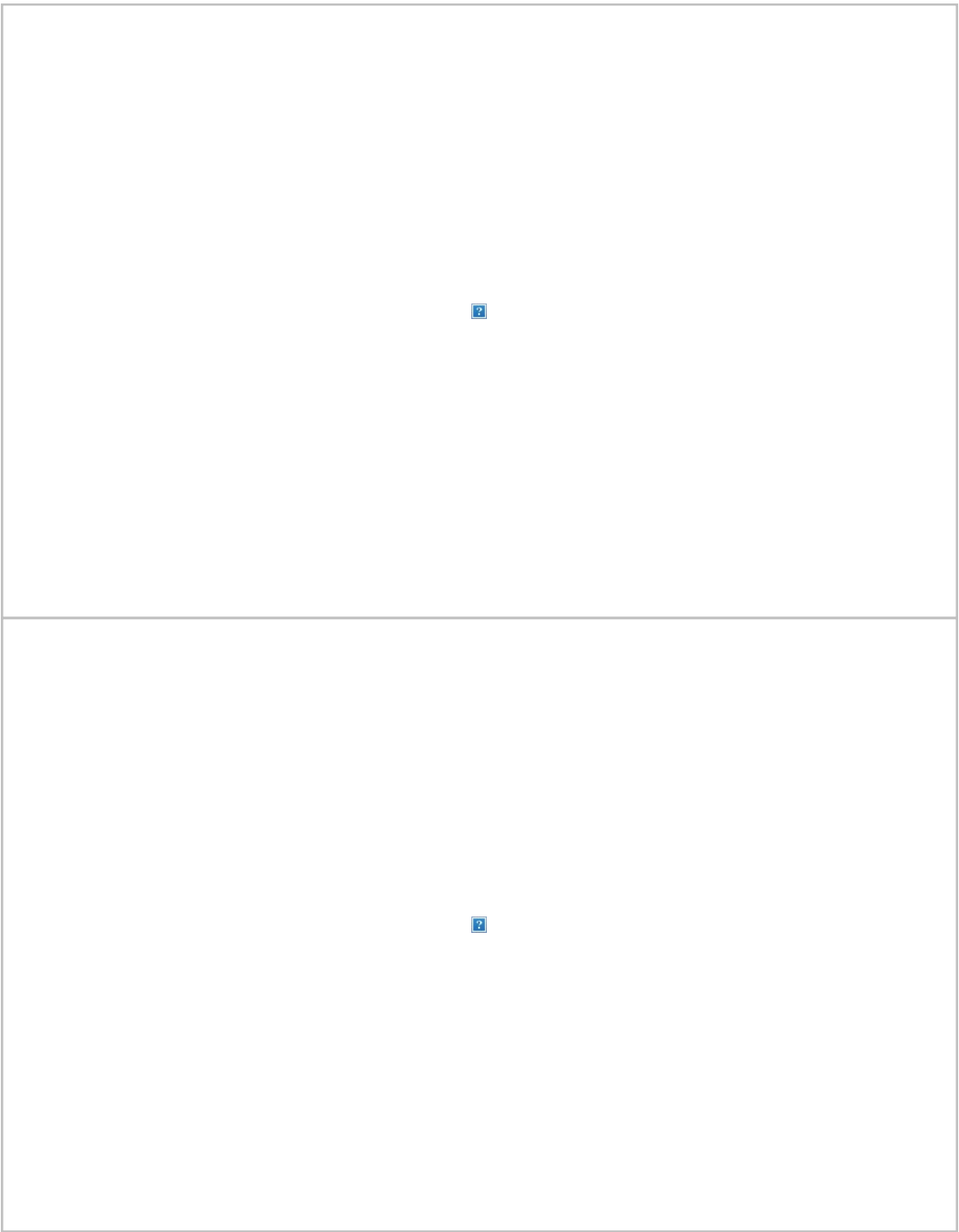
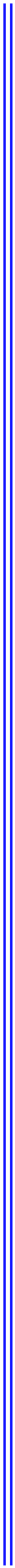
Please read the attached PDF(s). The TRPA has alleged to have exonerated itself from [environmental review for cell tower applications](#) via transferring all responsibility to the Federal Communications Commission (FCC). It is clear the FCC has abandoned their own legal duties under the National Environmental Policy Act (NEPA). Below is a published [explanation](#) by a [recently retired FCC environmental attorney](#) of what happens when local governments such as the TRPA [defer responsibility to the FCC](#). The TRPA staff ought to feel humiliated for having been the only line of defense against [egregious environmental fraud](#) yet they purposefully decided to actively aid and abet in such obvious deceit. Having actual or constructive knowledge of the [undermentioned publication](#), you need to have command over the subject matter else be nakedly in the dark that [you are egregiously on the wrong side of history](#) (Erica Rosenberg (2022) [Environmental Procedures at the FCC: A Case Study in Corporate Capture, Environment: Science and Policy for Sustainable Development](#) 64:5-6, 17-27, DOI: [10.1080/00139157.2022.2131190](#)):

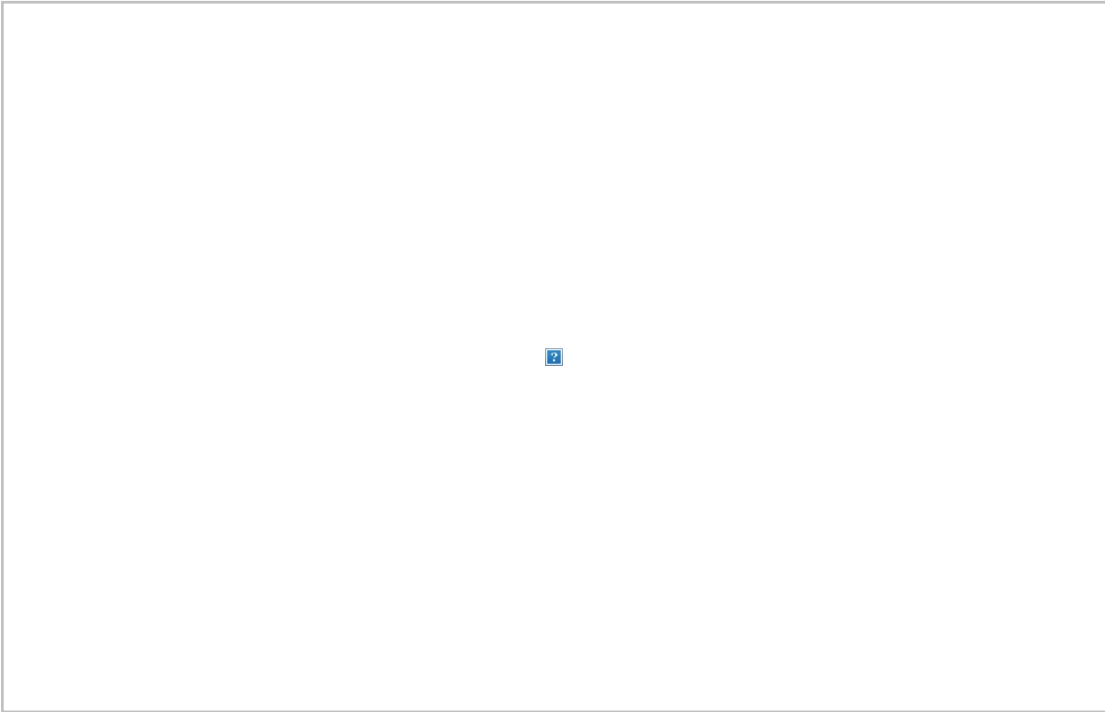
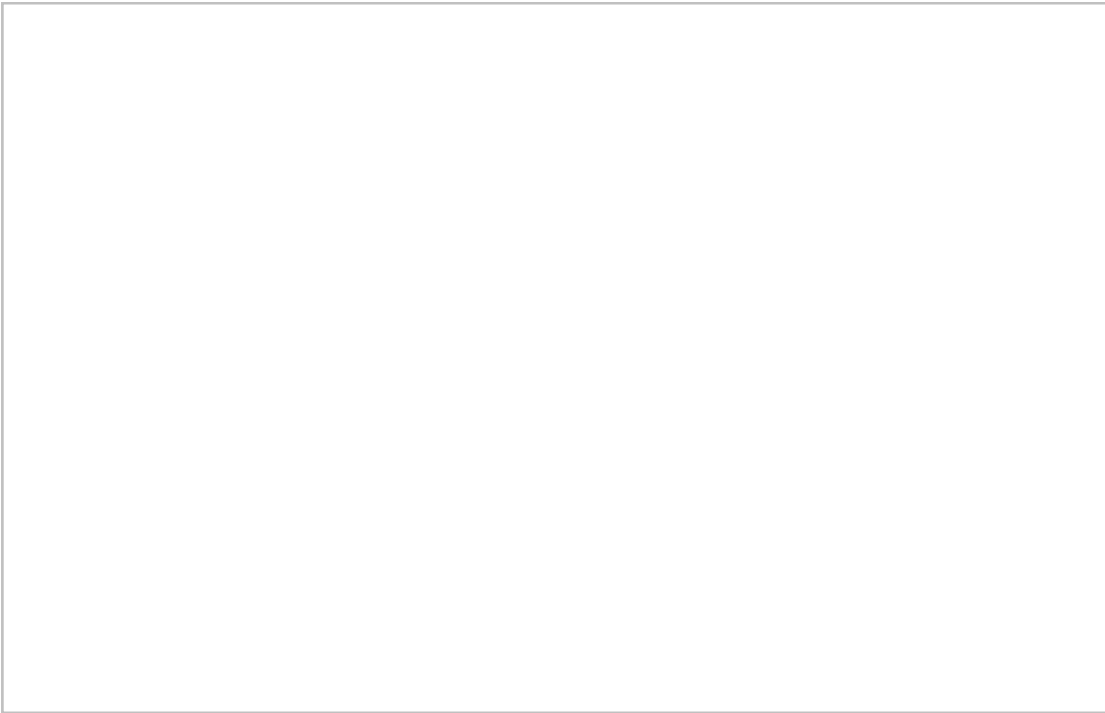




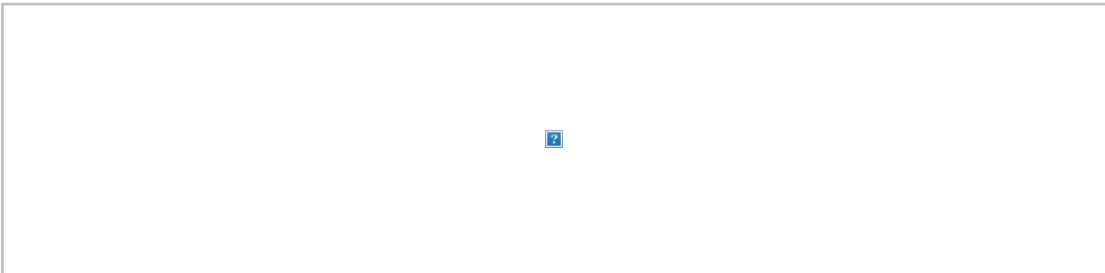




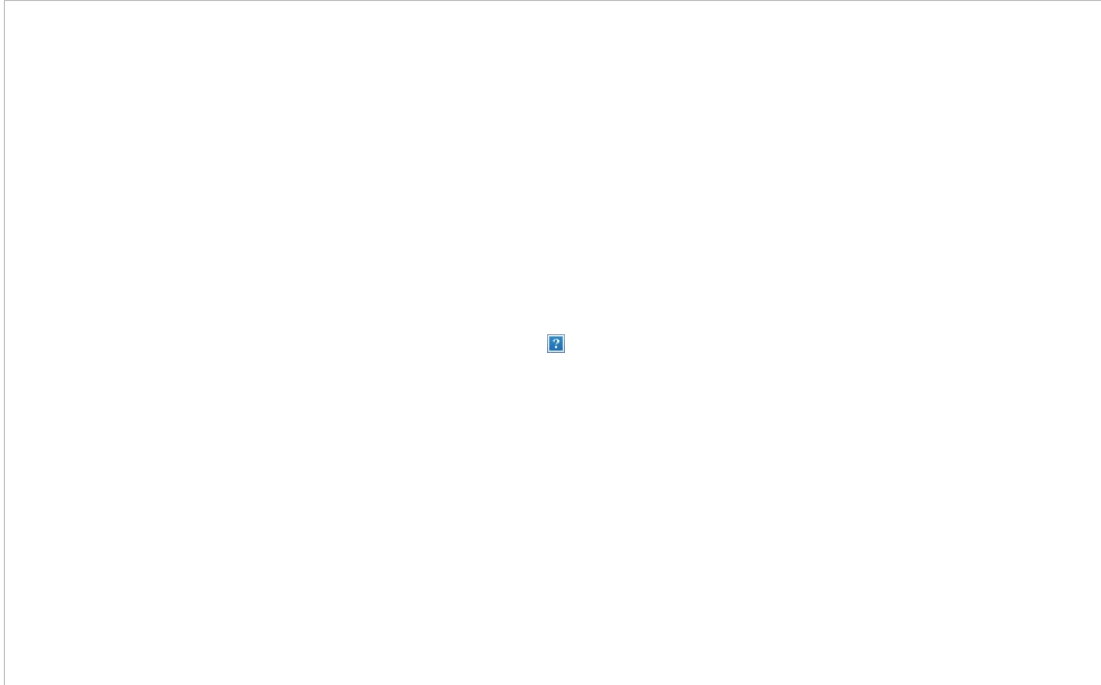




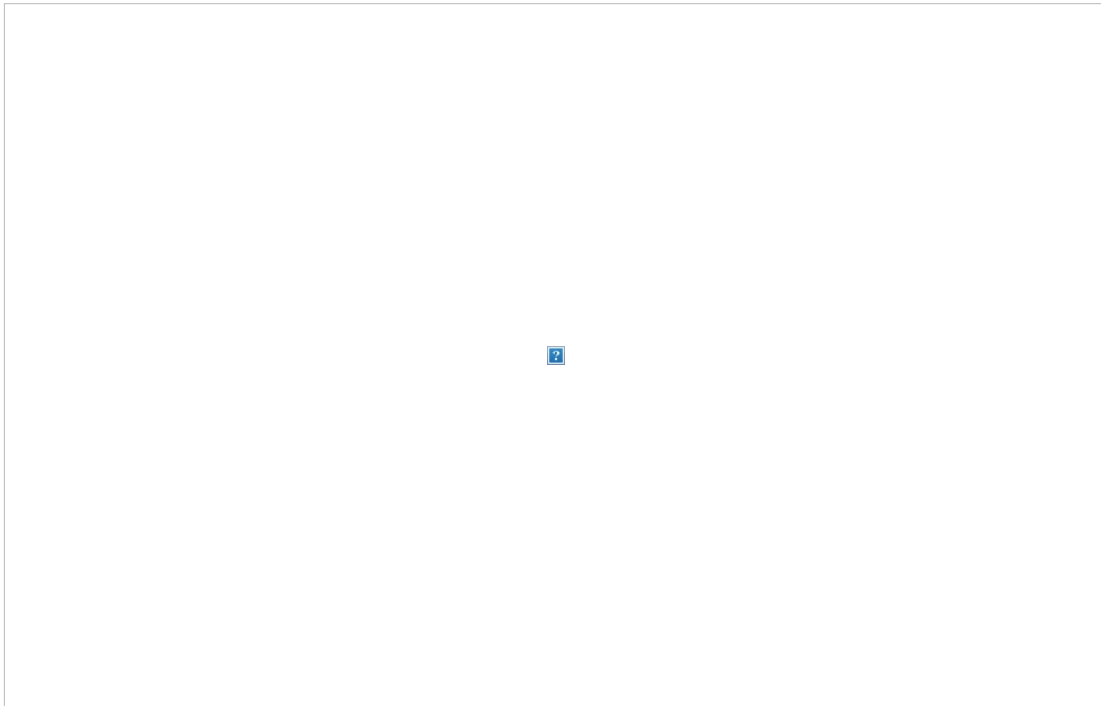
You may also watch an video interview of the author:



The FCC is a captured agency (Norm Alster. "[Captured Agency: How the Federal Communications Commission Is Dominated by the Industries It Presumably Regulates](#)," Harvard University Edmond J. Safra Center for Ethics (June 23, 2015)).

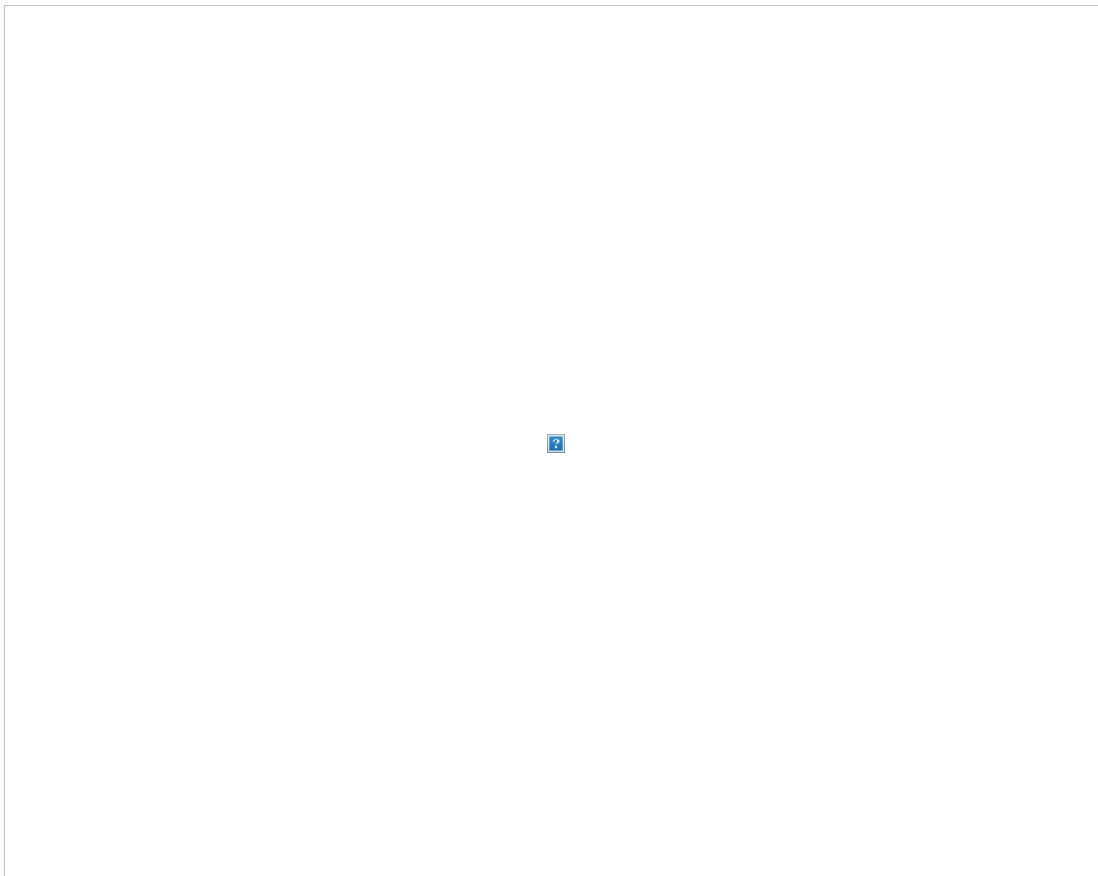


There is also a strong argument that the TRPA itself has become a real estate developer captured agency...which explains why neither agency has done anything about the science:



In summary, both the FCC and the TRPA allege they preempt our local governments over environmental regulation of radiofrequency radiation, and then they along with the USFS malfeasantly ignore this legal responsibility via deliberate indifference of known adverse environmental effects such as [the undermentioned ones](#). The aforementioned article shows the FCC corruptively declines to extend any consideration of health effects beyond those thermal effects directly affecting humans despite federal courts a decade ago finding that NEPA requires a broad construction that encompasses wildlife ([Jaeger v. Cellco P'ship](#), No. 3:09CV567, p. 18, 2010 U.S. Dist. LEXIS 24394, at *26 (D.Conn. Mar. 15, 2010) ("The plain meaning of the term 'environmental effects' incorporates adverse effects on all biological organisms"). This means the the FCC will almost certainly continue to ignore the degree to which radiofrequency radiation can harm [frogs, trees](#) including [aspen, migratory birds, and birds of prey](#) – which is contrary to their own regulations (47 CFR §§ [1.1307](#) & [1.1311](#)) (Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared...Facilities that...May affect listed threatened

or endangered species or designated critical habitats; or...are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of...habitats...Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion); The applicant shall submit an EA with each application that is subject to environmental processing...The EA shall contain the following information:...A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community....If endangered or threatened species or their critical habitats may be affected, the applicant's analysis must utilize the best scientific and commercial data available). This proposed cell tower may clearly have an effect on the environment (see, e.g., [American Bird Conservancy, Inc. v. F.C.C.](#), 516 F.3d 1027, [1033-1034](#) (2008) (a precondition of certainty before initiating NEPA procedures would jeopardize NEPA's purpose to ensure that agencies consider environmental impacts before they act rather than wait until it is too late); [Sierra Club v. Norton](#), 207 F.Supp.2d 1310, 1336 (2002) (Under NEPA, an agency cannot use the lack of existing information as a basis for acting without preparing an EIS)). "Environment" includes ecological impacts, health impacts, social and economic impacts ([40 CFR §1508.1\(g\)\(1\)&\(m\)](#)). See generally, 42 U.S.C. §§ [4331-4332](#); 40 C.F.R. §§ [1500-1508](#). Presidential Executive Orders [13057](#) and [13186](#) add further protective duty to FCC actions in the Tahoe Basin as well as with all actions which may effect migratory birds. The FCC needed to obtain a [U.S. Fish and Wildlife Service \(FWS\)](#) biological opinion pursuant to [16 U.S.C. § 1536\(a\)\(2\)](#); 50 CFR §§ [402.11](#), [402.14](#), & [402.15](#); Verizon itself was actually required to stop construction ([47 CFR § 1.1312\(d\)](#)). This fiasco could have been entirely prevented with transparency, adequate public notice, and otherwise substantive due process whereas these regulations further required that "environmental information is available to public officials and citizens before decisions are made and before actions are taken" (See, [Oglala Sioux Tribe v. Nuclear Regulatory Comm'n](#), 896 F.3d [520](#) (D.C. Cir. 2018)). To the contrary, Verizon initially withheld and then continually dripped out novel environmental cell tower impact information up to the second 2022 TRPA Governing Board hearing on the Ski Run Cell Tower. The information provided to the public in the 2019 "public notice" pales in comparison to what Verizon ambushed the public with at the final TRPA hearing.



It is incontrovertible that [the USEFS and TRPA have established Bijou Park Creek as qualifying habitat](#) for Sierra Nevada Yellow-legged Frog. Under the Endangered Species Act, prohibited "harm" includes "significant habitat modification or degradation" ([Babbitt v. Sweet Home](#), 515 U.S. 687 (1995)). Thus, this habitat as well as the endangered animal is protected from private action (*id.*). This is true regardless of whether the habitat is actually utilized, notwithstanding the fact that there is also compelling evidence that the habitat is in fact utilized (e.g. [A](#), [B](#), [C](#), [D](#), & [E](#)) / (e.g., [1](#), [2](#), [3](#), [4](#) & [5](#), [6](#)).

The prestigious National Institute of Health—National Toxicology Program (NIH—NTP) decade-long [Cell Phone study](#) has established that radiofrequency radiation used by cell phones cause DNA damage (Smith-Roe, Stephanie L et al. "[Evaluation of the genotoxicity of cell phone radiofrequency radiation in male and female rats and mice following subchronic exposure.](#)" [Environmental and molecular mutagenesis](#) vol. 61,2 (2020): 276-290. doi:10.1002/em.22343) (results suggest that exposure to RFR is associated with an increase in DNA damage); (Hardell, L., Carlberg, M. "[Comments on the US National Toxicology Program technical reports on toxicology and carcinogenesis study in rats exposed to whole-body radiofrequency radiation at 900 MHz and in mice exposed to whole-body](#)

[radiofrequency radiation at 1.900 MHz.](https://doi.org/10.3892/ijo.2018.4606) International Journal of Oncology 54, no. 1 (2019): 111-127. <https://doi.org/10.3892/ijo.2018.4606> (We conclude that there is clear evidence that RF radiation is a human carcinogen; RF radiation should be classified as carcinogenic to humans, Group 1). The peer-reviewed scientific studies such as the NIH study are not "bunk science" reasonably subject to dispute. This finding has been reproduced in by other prestigious scientific studies (Ioniță, E., Marcu, A., Temelie, M. et al. "Radiofrequency EMF irradiation effects on pre-B lymphocytes undergoing somatic recombination." NATURE.Sci Rep 11, 12651 (2021). <https://doi.org/10.1038/s41598-021-91790-3>). RFR radiation causes DNA damage in plants as well (Dmitry S. Pesnya & Anton V. Romanovsky, *Comparison of cytotoxic and genotoxic effects of plutonium-239 alpha particles and mobile phone GSM 900 radiation in the Allium cepa test*, 750 MUTATION RESEARCH, 27 - 33, (2013), <http://dx.doi.org/10.1016/j.mrgentox.2012.08.010>).

There is a "clear and convincing" body of scientific evidence showing that radiofrequency radiation really may cause DNA damage (Henry Lai. "Genetic effects of non-ionizing electromagnetic fields," Electromagnetic Biology and Medicine, (2021) 40:2, 264-273, DOI: 10.1080/15368378.2021.1881866) (of the 361 peer-reviewed scientific studies on the subject to date, "the majority of studies reported genetic effects of EMF (66% for RFR and 79% for static/ELF-EMF). Thus, it is safe to conclude that genotoxic effects of EMF have been reported. The most common effects found are: DNA strand breaks, micronucleus formation, and chromosomal structural changes")

DNA damage is merely one of a myriad of non-thermal environmental effects apparently caused by radiofrequency radiation. The FCC is not even concerned about the established thermal effects being applied to wildlife – or anything other than humans. The precautionary principle requires us to at least assess the potential environmental impacts of radiofrequency radiation under the worst case scenario (cf., Pearce, J M. "Limiting liability with positioning to minimize negative health effects of cellular phone towers." Environmental research vol. 181 (2020): 108845. [doi:10.1016/j.envres.2019.108845](https://doi.org/10.1016/j.envres.2019.108845)).

The FCC's radiofrequency radiation exposure limits have been outdated by modern science, yet the FCC arbitrarily and capriciously refuses to update them (International Commission on the Biological Effects of Electromagnetic Fields (ICBE-EMF). *Scientific evidence invalidates health assumptions underlying the FCC and ICNIRP exposure limit determinations for radiofrequency radiation: implications for 5G.* Environ Health 21, 92 (2022). <https://doi.org/10.1186/s12940-022-00900-9>). See also, *Environmental Health Trust v. Federal Communications Commission*, No. 20-1025 (D.C. Cir. 2021) ("we find the Commission's order arbitrary and capricious in its failure to respond to record evidence that exposure to RF radiation at levels below the Commission's current limits may cause negative health effects"). The FCC has blatantly ignored the public policy imperative updates which clearly arise from the current body of science (Levitt, B Blake et al. "Effects of non-ionizing electromagnetic fields on flora and fauna, Part 3. Exposure standards, public policy, laws, and future directions." *Reviews on Environmental Health* vol. 37,4 531-558. 27 Sep. 2021, [doi:10.1515/revh-2021-0083](https://doi.org/10.1515/revh-2021-0083)).

The FCC may not use *ex post facto* environmental review which would be arbitrary and capricious. "[W]hen 'assessing the reasonableness of [an agency's action], [courts] look only to what the agency said at the time of the [action] – not to its lawyers' post-hoc rationalizations" (*Environmental Health Trust v. Federal Communications Commission*, 9 F.4th 893, 910 (D.C. Cir. 2021) (quoting *Good Fortune Shipping SA v. Commissioner*, 897 F.3d 256, 263 (D.C. Cir. 2018)). "It is well-established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself" (*Nat. Res. Def. Council v. U.S. Envtl. Prot. Agency*, No. 20-72794 at p.9 (9th Cir. 2022) (quoting *Nat. Res. Def. Council v. U.S. EPA (NRDC 2013)*, 735 F.3d 873, 877 (9th Cir. 2013) (quoting *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983))). "Courts do not "accept appellate counsel's post-hoc rationalizations for agency action" (*Id.* quoting *Nat. Res. Def. Council v. U.S. EPA (NRDC 2017)*, 857 F.3d 1030, 1040 (9th Cir. 2017) (quoting *Hernandez-Cruz v. Holder*, 651 F.3d 1094,1109 (9th Cir. 2011))). "If the agency did not meet its burden, [courts] 'should not attempt...to make up for such deficiencies' and 'may not supply a reasoned basis for the agency's action that the agency itself has not given'" (*Id.* quoting *Ctr. for Biological Diversity v. Haaland*, 998 F.3d 1061, 1067 (9th Cir. 2021) (quoting *State Farm*, 463 U.S. at 43)). See also, *Kisor v. Wilkie*, 139 S. Ct. 2400, 2417 (2019) (noting a court should decline to defer to a post hoc rationalization advanced to defend past agency action against attack); *San Luis & Delta-Mendota Water Authority v. Jewell*, 747 F.3d 581, 603 (9th Cir. 2014)). After all, it is "NEPA's purpose to ensure that agencies consider environmental impacts before they act rather than wait until it is too late" (*supra*, *American Bird Conservancy, Inc. v. F.C.C.*, at 1033-1034; *Oglala Sioux Tribe v. Nuclear Regulatory Comm'n*, at 520 (The National Environmental Policy Act...obligates every federal agency to prepare an adequate environmental impact statement before taking any major action...The statute does not permit an agency to act first and comply later); *Marsh, Secretary of the Army, et al. v. Oregon Natural Resources Council et al.*, 490 U.S. 360, 371 (1989) (NEPA is intended to "prevent or eliminate damage to the environment . . . by focusing government and public attention on the environmental effects of proposed agency action").

Sincerely,

David Chain

The purpose of copyright law is "to Promote the Progress of Science and useful Arts" (U.S. Const. art. I, § 8, cl. 8). The House Committee on the Judiciary explicitly listed "reproduction of a work in legislative or judicial proceedings or reports" as an example of a fair use (H.R. Rep. No. 94-1476, 65 (1976)). Introducing entire copyrighted works in official governmental proceedings is generally fair use (*Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 449-50 (1984) ("the fact that the entire work is reproduced...does not have its ordinary effect of militating against a finding of fair use"); *Jartech, Inc. v. Clancy*, 666 F.2d 403 (9th Cir. 1982) (holding that the city councils use of copyrighted material in the legal proceedings was not "the same intrinsic use to which the copyright holders expected protection from unauthorized use"); *Stern v. Doez*, 978 F. Supp. 2d 1031, 1044-49 (C.D. Cal. 2011) (reproduction of copyrighted material for use in litigation or potential litigation is generally fair use, even if the

material is copied in whole); *Ty, Inc. v. Publications Intern. Ltd.*, 292 F.3d 512 (7th Cir. 2002) (reproducing copyrighted works for litigation is an example of the fair use doctrine); *Healthcare Advocates, Inc. v. Harding, Earley, Follmer & Frailey*, 497 F.Supp. 2d 627, 638 (E.D. Pa. 2007) (holding that law firm's copying of an entire set of copyrighted web pages was justified where the web pages were relevant evidence in litigation); *Hollander v. Steinberg*, 419 Fed.Appx. 44 (2d Cir. 2011) (affirming dismissal of a copyright case by an attorney, where opposing counsel in an earlier civil action had appended that attorney's blog entries to a motion); *Religious Tech. v. Wollersheim*, 971 F.2d 364 (9th Cir. 1992) (holding that providing copies of the plaintiff's copyrighted documents to the defendant's expert witness was fair use); *Porter v. United States*, 473 F. 2d 1329 (5th Cir. 1973) (rejecting a claim by the widow of Lee Harvey Oswald that she was entitled to compensation because the publication of Oswald's writings in the Warren Commission Report diminished the value of the copyright in those works); *Kulik Photography v. Cochran*, 975 F. Supp. 812 (E.D. Va. 1997) (dismissing on jurisdictional grounds of a copyright infringement suit brought by the author of a photograph that was used without permission in the O.J. Simpson murder trial); *Levingston v. Earle*, No. 3:2012cv08165 (D. Ariz. 2014) (holding that appending a full copy of an author's book to a pleading, in a harassment proceeding against that author, was fair use); *Grundberg v. the Upjohn Co.*, 140 F.R.D. 459 (D. Utah 1991) (rejecting the defendant's attempt to register a copyright in its document production in order to restrict the plaintiff's use and public dissemination of those documents); *Shell v. City of Radford*, 351 F. Supp.2d 510 (W.D. Va. 2005) (dismissing a copyright infringement suit by a photographer whose photographs were copied and used by detectives investigating the murder of the photographer's assistant); *Denison v. Larkin*, 64 F. Supp. 3d 1127 (N.D. Ill. 2014) (dismissing with prejudice Plaintiff attorney's suit against defendants for using portions of her copyrighted Blog as evidence against her in an attorney disciplinary proceeding); *Carpenter v. Superior Court (Yamaha Motor Corp., USA)*, 141 Cal.App.4th 249 (2006) (holding the plaintiff in a personal injury action could gain access to certain standardized neurological tests over an objection that the tests were protected by, inter alia, copyright law)).

See also, [DOJ Guidance on Copyrighted Materials and Public Records Acts](#) (FOIA is designed to serve the public interest in access to information maintained by the government...disclosure of nonexempt copyrighted documents under the FOIA should be considered a "fair use"); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed).

Pursuant to PUBLIC LAW 96-551 – DEC. 19, 1980, Arts. III(f), VI(b)&(j)(5), & VII(d); CA Government Code §§ [54954.1](#), [54957.5](#), & [54959](#); N.R.S. [Ch. 239](#) & § [241.020](#); and TRPA Rules of Procedure §§ [2.6](#), [15.2](#), & [15.5](#), public comments must be readily and immediately available to the entire public at the time the documents are disseminated to a quorum of the hearing body—intentional deprivation to the public of such information is a crime.

As you know, [PUBLIC LAW 96-551 – DEC. 19, 1980](#), Art. [III\(d\)](#), requires that:

"The governing body of the agency shall meet at least monthly. All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held."

This is also reflected in TRPA Rules of Procedure §§ [2.6](#).

Nevada promulgates its open meeting at N.R.S. § [241.020](#) wherein (3)(d)(3) requires that meetings have:

"An agenda consisting of:

Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

(I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

...

the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting."

wherein (3)(d)(7) requires the agenda give notice of:

"Any restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint."

N.R.S. [Ch. 239](#) further promulgates such comment materials are public records.

CA Government Code § [54954.3\(a\)&\(c\)](#) reiterates Nevada Law:

"Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body..."

The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law."

Moreover, CA Government Code § [54957.5\(b\)](#) further states:

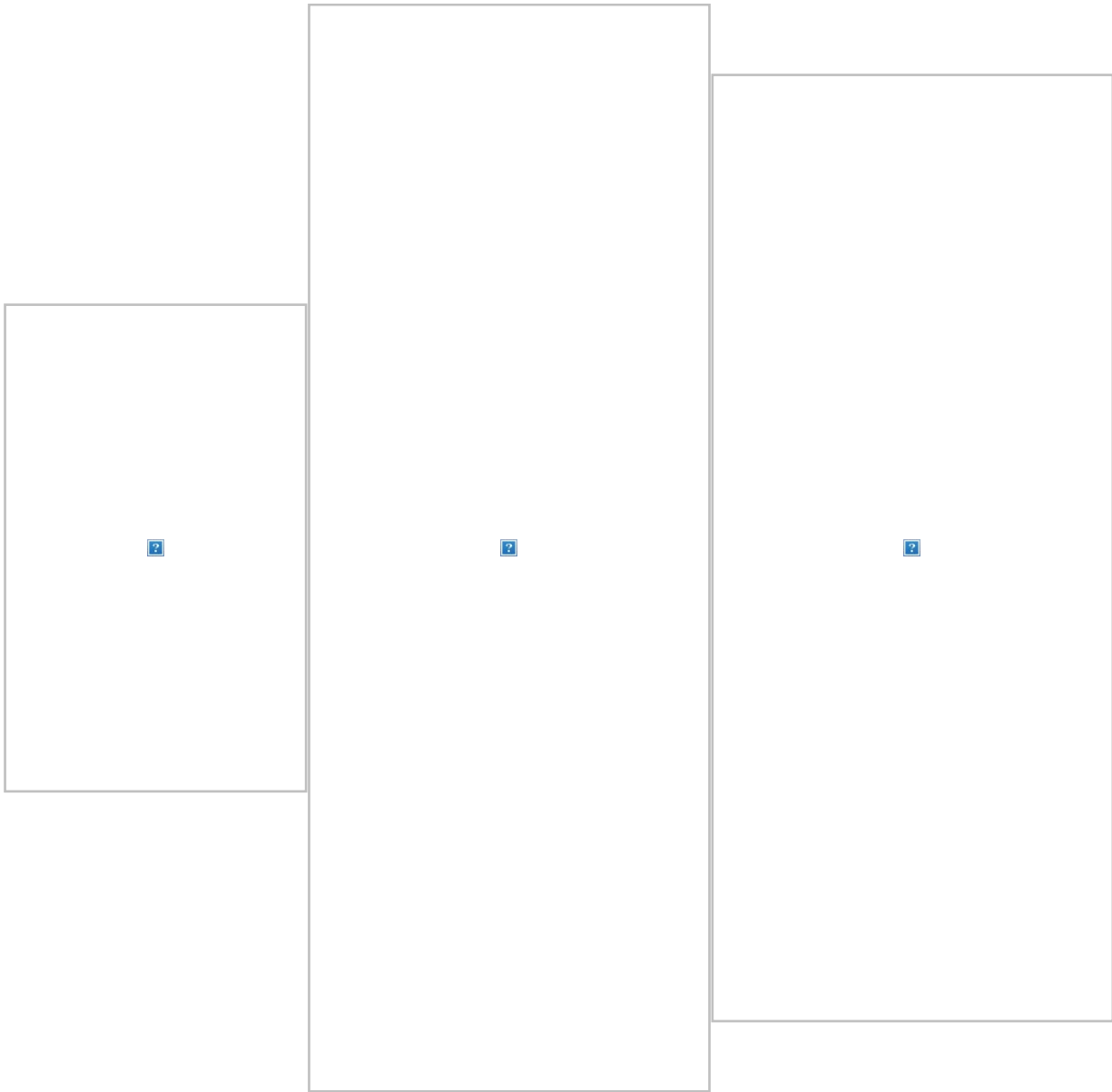
"If a writing is a public record related to an agenda item for an open session of a regular meeting of the legislative body of a local agency and is distributed to all, or a majority of all, of the members of a legislative body of a local agency by a person in connection with a matter subject to discussion or consideration at an open meeting of the body less than 72 hours before that meeting, the writing shall be made available for public inspection ... at the time the writing is distributed to all, or a majority of all, of the members of the body."

CA Government Code § [54954.2\(a\)\(1\)](#):


"At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting"

See also, CA Government Code § [54954.1](#) & [54959](#); TRPA Rules of Procedure §§ [2.6](#), [15.2](#), & [15.5](#); Governing Board Meeting October 26-27, 2022 [Agenda Item No. VIII.B.1 Open Meeting Law Requirement](#).

Nevada law "imposes the greater requirement" whereas it requires three opportunities for public comment: "at the beginning of the meeting" and "before the adjournment of the meeting" and "after each item on the agenda is discussed by the public body" ([N.R.S. § 241.020\(3\)\(d\)\(3\)](#)). However, TRPA purposefully fails to provide notice of public comment in its published agenda and then fails to provide for public comment "at the beginning of the meeting." Compare the left two TRPA public notices published in the [Tahoe Daily Tribune](#) with the right notice published in the same newspaper by the [NTRPA](#):



Again, there is no public comment on the agenda for the upcoming May 24th or June 28th 2023 TRPA GB meetings either:

		<p style="text-align: center;">TAHOE REGIONAL PLANNING AGENCY GOVERNING BOARD NOTICE OF PUBLIC HEARINGS</p> <p>The Governing Board/Committee will be held at the Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV. Pursuant to TRPA Rules of Procedure, 2.16 Teleconference/Video Conference Meetings and Participation, Board members may appear in person or on Zoom. Members of the public may observe the meeting and submit comments in person at the above location or on Zoom. Details will be posted on the day of the meeting with a link to Zoom.</p> <p>NOTICE IS HEREBY GIVEN that at its regular meeting to be held on Wednesday, June 28, 2023, the Governing Board commencing at 9:30 a.m., at the Tahoe Regional Planning Agency, the Governing Board of the Tahoe Regional Planning Agency will conduct a public hearing on the following: 1) Proposed Amendments to Washoe County's Tahoe Area Plan to Allow Single Family Condominium Uses in Special Area 1 of the Incline Village Commercial Regulatory Zone (possible action).</p> <p>Julie W. Regan Executive Director Published: June 2, 2023</p>
--	---	--

Nevada also "imposes the greater requirement" whereas it requires 3 working days notice notice of the meeting agenda compared to California's 72 hours notice with weekend and holidays inclusive ([N.R.S. § 241.020\(3\)](#); [CA Government Code § 54954.2\(a\)\(1\)](#)).

TRPA Rule of Procedure § [2.10.2](#) is in egregious violation of TRPA Compact Art. [III\(d\)](#) whereas N.R.S. § [241.020\(3\)\(d\)\(3\)\(I\)](#) requires that meetings have "Periods devoted to

comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken...**At the beginning of the meeting before any items on which action may be taken are heard by the public body** and again **before the adjournment of the meeting.**" The TRPA Rules of Procedure are routinely modified for *ad hoc* political purposes in without published public notice in violation of basic due process of law (*infra*, [Mullane v. Central Hanover Tr. Co.](#), at 314, [315](#) (holding it would be idle to pretend that publication alone is a reliable means of acquainting interested parties of the fact that their rights are before the tribunal; "Where the names and postoffice addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency"; published notice "is inadequate, not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand"; "Publication may theoretically be available for all the world to see, but it is too much in our day to suppose that each or any individual...does or could examine all that is published to see if something may be tucked away in it that affects his property interests"). *Cf.*, Cal. Gov. Code §§ 11343, [25124](#), & [36933](#); N.R.S. §§ [233B.060](#), [244.100](#), & [266.115](#)). Whereas TRPA does not post public comment on its website, it is in violation of CA Government Code § [54957.5\(b\)](#). No deference is given to an agency's interpretation of a statute that it does not administer or is outside of its expertise (*see*, *Medina-Lara v. Holder*, 771 F.3d 1106, 1117 (9th Cir. 2014); *Trung Thanh Hoang v. Holder*, 641 F.3d 1157, 1163-64 (9th Cir. 2011); *Mandujano-Real v. Mukasey*, 526 F.3d 585, 589 (9th Cir. 2008)). An agency action that departs from a prior policy without acknowledging the change, or that creates an "unexplained inconsistency" with prior policy is generally viewed as arbitrary and capricious (*National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. [967](#), [981](#) (2005); *Perez v. Mortg. Bankers Ass'n*, 575 U.S. [92](#) (2015) (holding that the APA "mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance")

Violation of Open Meeting Laws is a **crime** and may also amount to a constitutional violation actionable under [42 U.S.C. § 1983](#). It is well-established that government officers such as **TRPA Governors can be held liable for knowing about but failing to prevent constitutional violations** (*Reynaga Hernandez v. Skinner*, 969 F.3d 930, [941-42](#) (9th Cir. 2020) (An actor may be deemed to have caused a constitutional violation under the "integral-participant doctrine," if the defendant knew about and acquiesced in the constitutionally defective conduct as part of a common plan with those whose conduct constituted the violation)). The TRPA itself can also be held liable (*Monell v. Department of Social Services*, 436 U.S. 658, [691-92](#) (1978) (when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983); *Connick v. Thompson*, 563 U.S. 51, [61](#) (2011) (when municipality policymakers are on actual or constructive notice of city's programmatic violation of citizens' constitutional rights, the city may be deemed deliberately indifferent)). It is well settled that a "person" subject to liability can be an individual sued in an individual capacity (*see* *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (*en banc*)) or in an official capacity (*see*, *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013)). A "person" subject to liability can also be a local governing body (*see*, *Waggy v. Spokane County*, 594 F.3d 707, 713 (9th Cir. 2010)). This general doctrine applies to First Amendment violations as well (*Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 867 (9th Cir. 2016) ("A plaintiff may bring a Section 1983 claim alleging that public officials, acting in their official capacity, took action with the intent to retaliate against, obstruct, or chill the plaintiff's First Amendment rights. To bring a First Amendment retaliation claim, the plaintiff must allege that (1) it engaged in constitutionally protected activity; (2) the defendant's actions would 'chill a person of ordinary firmness' from continuing to engage in the protected activity; and (3) the protected activity was a substantial or motivating factor in the defendant's conduct—i.e., that there was a nexus between the defendant's actions and an intent to chill speech. Further, to prevail on such a claim, a plaintiff need only show that the defendant 'intended to interfere' with the plaintiff's First Amendment rights and that it suffered some injury as a result; the plaintiff is not required to demonstrate that its speech was actually suppressed or inhibited"). A "person" subject to liability can also be a local governing body (*see*, *Waggy v. Spokane County*, 594 F.3d 707, 713 (9th Cir. 2010)). An institutional defendant is not entitled to qualified immunity (*see*, *Owen v. Independence*, 445 U.S. 622, [638](#) (1980) (holding that "municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983"). Even a private party involved in conspiracy to deprive such rights with a government official may, even though not himself official of the government, be liable as well (*Adickes v. S. H. Kress & Co.*, 398 U.S. 144, [152](#) (1970)). Any ordinance which precludes the disproof in [quasi-]judicial proceedings of facts which would show or tend to show that an ordinance depriving suitor of life, liberty, or property has a rational basis is a "denial of due process" (*U.S. v. Carolee Products Co.*, 304 U.S. 144, [152](#) n.4 (1938) (noting heightened scrutiny in situations in which a law or regulation conflicts with Bill of Rights protections, where the political process has closed or is malfunctioning, and when regulations adversely affect "discrete and insular minorities").

Due process of law under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution—**supreme over all state law**—have the requirements that a tribunal allow all parties and public attendance to an opportunity to be heard, an opportunity to know all opposing evidence, and that it prepare a record of the evidence presented (*Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, [313](#), [314](#) (1950) (requisite of due process of law is the opportunity to be heard); *Greene v. McElroy*, 360 U.S. 474, [946-947](#) (1959) (the right to be confronted with evidence is protected in all types of cases where administrative and regulatory actions were under scrutiny); *Goldberg v. Kelly*, 397 U.S. 254, [269-70](#) (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses"). A transcript being made tends to restrain abuses by hearing officers and is almost essential if there is to be judicial review (Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267, [1282-87](#), [1291-94](#) (1975)). Due process requires an impartial tribunal (*supra*, *Goldberg v. Kelly*, at [271](#) ("impartial decision maker is essential"); *Arnett v. Kennedy*, 416 U.S. 134, [197](#) (1974) (the right to an impartial decisionmaker is required by due process); *see also*, *supra*, *Mullane v. Central Hanover Tr. Co.*, at 314, [315](#), [318-20](#) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"; "when notice is a person's due, process which is a mere gesture is not due process"); *supra*, *Greene v. McElroy*, at [946-947](#) (the right to be confronted with evidence is protected in all types of cases where administrative and regulatory actions were under scrutiny)).

The constitutional due process right to a public hearing dovetails with the First Amendment whereas, the "right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all" (*supra*, *New York Times Co. v. Sullivan*, at [270](#)). "[T]he path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies" (*id.*). Contrary city practices to systematically rig an egregiously uneven playing field towards succumbing to an authoritarian outcome are "conscious shocking" in the constitutional sense (*cf.*, *supra*, *County of Sacramento v. Lewis*, at [846](#)). It is well-established that the chilling of witness testimony or other suppression of evidence is a form of constitutional violation (*see*, *Mellen v. Winn*, 900 F.3d 1085, 1096 (9th Cir. 2018); *Tennison v. City & Cnty. of S.F.*, 570 F.3d 1078, 1087, 1089 (9th Cir. 2009); *see also*, *Carrillo v. Cnty. of L.A.*, 798 F.3d 1210, 1219 (9th Cir. 2015); *cf.*, *Park v. Thompson*, 851 F.3d 910 (9th Cir. 2017)).

The TRPA appears to believe they answer to nobody.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd.**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

--
David Chain

--
David Chain

FAILURE AT THE FCC: HOW THE AGENCY IGNORES THE ENVIRONMENT

Environment

Journal of Policy & Environment

COVID Inequities in the U.S. Experience



INTERVIEW: JOSEPH
HEATHCOTT, CHAIR OF URBAN
AND ENVIRONMENTAL STUDIES,
THE NEW SCHOOL

October/November 2020
Volume 44, Numbers 3-4
\$8.00 U.S./Canada

Environmental Procedures at the FCC: A Case Study in Corporate Capture

by Erica Rosenberg

With infrastructure including millions of miles of fiber optic cable and lines, thousands of towers, earth stations and satellites, and hundreds of thousands of small cells,¹ the telecommunications industry leaves a significant environmental footprint: wetlands filled, viewsheds marred, cultural resources damaged, and habitat destroyed. As the agency overseeing telecommunications, the Federal Communications Commission (FCC) regulates radio, TV, satellite, cable, and both wireline and wireless communications—and associated entities like Verizon, AT&T, and broadcast and radio corporations. It also plays a critical role in providing universal broadband and telecommunications access, and authorizing facilities associated with wireline and wireless build-outs. Yet the FCC fails to fulfill its mandatory duties under the National Environmental Policy Act (NEPA) in multiple and significant ways.²

Towers have a breadth of individual and cumulative environmental impacts, many of which, such as visual impacts and tree removal, are not properly considered in the FCC's environmental review processes.



©Shutterstock/Production

Like all federal agencies, the FCC must follow environmental laws, including NEPA, which requires it to assess potential environmental effects of its actions before it authorizes, funds, or licenses projects and communications infrastructure. These effects include visual and ecological impacts, and radio frequency emission exceedances, caused by the proliferation of wireless technology and the networks constructed to deploy it. The agency is supposed to follow legal requirements to assess such environmental impacts and, in doing so, to consider the concerns of communities and citizens.

It does neither. For most deployments it authorizes, the FCC rarely completes any environmental review or makes NEPA documents available to the public; instead, with little FCC oversight or enforcement, industry is delegated the task of determining how much environmental review is appropriate for its deployments and in most cases, is not required to submit documentation of those determinations.

In licensing and authorizing facilities associated with telecommunications, broadband, and broadcasting technologies, the FCC intentionally and routinely fails to meet its environmental obligations and epitomizes “regulatory capture.” It treats environmental laws as obstacles to be circumvented or ignored, first by promulgating rules that fall short of what NEPA requires and then by failing to properly implement and enforce its own substandard rules. The chronic failure has cumulative, incalculable, and largely unknown environmental impacts.

Combined with statutory authority that curtails local government authority to regulate or block telecom deployment in their jurisdiction, public and local voices in what is deployed and where are further diminished.³ Equally important, the agency suppresses and dismisses the voices of communities and citizens concerned about these encroachments. As wireless infrastructure proliferates under the auspices of an agency that flouts federal law, unabated and unaccounted for environmental impacts will only multiply.

NEPA: An Instrument of Democracy and Accountability

NEPA, a Nixon-era law and one emulated around the world, outlines a process for decision-making about “major federal actions, like dam-building, offshore drilling, and highway expansions.” Council on Environmental Quality implementing rules define major federal actions broadly to include “new and continuing activities, including programs entirely or partly financed, assisted, conducted or approved by federal agencies.” They also include “approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.”⁵

NEPA requires the government to disclose broadly defined environmental impacts of proposed actions—and to consider alternatives—including not undertaking the action.⁶ It allows the public, from local governments to tribes to citizens, to participate in the decision.⁷

The greater the potential environmental impacts of a project, action, or policy, the more analysis and the more opportunities for public input and challenge. NEPA requires a full-scale environmental review (environmental impact statement) for major actions with potentially great environmental effects like a highway, a shorter assessment (environmental assessment) for actions that may have less significant impacts, and exemptions from analysis for categories of routine actions (categorical exclusions), like removing brush, that the agency has determined individually or cumulatively have no significant environmental effect. Although a categorical exclusion may exist for an action, in any given case, extraordinary circumstances such as the presence of environmentally sensitive resources can remove an action from a categorical exclusion and require either a documented categorical exclusion or more NEPA review. For example, even if the United States Forest Service categorically excludes brush removal on small tracts, brush removal in critical habitat for endangered species would require the agency to consider and document that its action

would still not require an environmental assessment or conduct an environmental assessment.

As a procedural statute, NEPA cannot stop environmentally harmful projects, but it can substantially improve the imprint of an action by, for example, rerouting a power line to protect a stream, or bringing information about wildlife to light so that licensees can take mitigation measures. In short, NEPA, by mandating transparency and accountability, is an instrument of democracy and good governance. NEPA also requires that agencies promulgate policies or rules implementing NEPA in accordance with Council on Environmental Quality rules, and in consultation with the Council on Environmental Quality.

FCC's Failure to Consider Major Federal Actions

Council on Environmental Quality rules place many of the FCC's licensing and funding activities squarely within the definition of a major federal action. Yet the FCC has construed major federal actions narrowly or has simply not considered whether its actions are major federal actions. Consequently, the agency has not considered actions like providing financial assistance to carriers for deployment of small cells and build-outs with associated cable-laying and transmission lines as major federal actions.⁸

In 2018, the agency went as far as to deem all licensing of small cell facilities, which it authorizes as part of a license to carriers, as not requiring environmental review because they were not major federal actions.⁹ Termed by industry as unobtrusive—“smaller than a pizza box or backpack”¹⁰—small cell facilities can be significantly larger and are placed on buildings or associated poles. In its order, the agency both eliminated federal environmental review of small cells and significantly limited local authority over small wireless infrastructure deployment.

In her dissent to the order, FCC Commissioner Jessica Rosenworcel noted that 5G would require millions of miles of fiber and up to 800,000 small



The FCC is authorizing the deployment of hundreds of thousands of small cells with little public input or environmental review.

cells by 2026. The order thus “runs roughshod over the rights of our Tribal communities and gives short shrift to our most basic environmental and historic preservation values.”¹¹ She noted that the Mobility Fund, which supports carriers in bringing wireless services to underserved areas, would support updated wireless service, to the tune of \$4.53 billion. Yet in effect, she states, the FCC reads “projects carried out with financial assistance” (a requirement of the National Historic Preservation Act) as well as NEPA out of the law.¹² It also “removes many larger wireless facilities from environmental oversight.”¹³

The FCC’s efforts to eliminate small cell review were struck down by the D.C. Circuit in *United Keetoowah v. FCC*,¹⁴ a case brought by the Natural Resources Defense Council and several tribes. The court found: “The scale of the deployment the FCC seeks to facilitate, particularly given its exemption of small cells

that require new construction, makes it impossible on this record to credit the claim that small cell deregulation will ‘leave little to no environmental footprint. *Order* ¶ 41.”¹⁵

Appropriately, the FCC considers licensing spectrum and registering towers to be major federal actions that trigger NEPA. However, while the FCC recognizes that its grant of geographic licenses to carriers triggers NEPA, it issues the licenses without any knowledge of how the licensee will deploy infrastructure in its build-out. In most cases, it cannot know because the carrier may not have finalized its build-out plans for construction of towers, transmission lines, and small cell facilities over time. In fact, the agency does not prepare and never has prepared an environmental impact statement on a build out—or on any other major federal action; it has only prepared one programmatic environmental assessment, which was in response to a lawsuit.¹⁶ Instead, it requires

NEPA review only on a facility-by-facility basis, which also circumvents a NEPA requirement to consider cumulative effects.¹⁷ Segmenting a project into smaller components is illegal, and the FCC’s approach is another way it flouts the law.

FCC’s Inadequate NEPA Rules

FCC NEPA rules undermine NEPA at every turn—they are inadequate both as written and as implemented. The rules’ unusual structure and an agency that interprets its rules in favor of the carriers mean that most projects proceed without adequate environmental review and consideration.

Unlike other agencies’ rules, FCC rules do not identify categories of actions that do not require further NEPA review; rather, the rules categorically exclude *all* actions the agency takes except for those that meet a limited set of itemized extraordinary circumstances.¹⁸ In other



Wireless infrastructure is changing the character of historic buildings and neighborhoods.

instances, the FCC deems its actions categorically excluded. For example, construction of submarine cables, which indisputably has potentially significant environmental impacts to reefs, ocean floors, and marine life, is explicitly excluded from review following a 1974 FCC order asserting that the environmental consequences are negligible.¹⁹

In dismissing the petition brought by an environmental nongovernmental organization to require more environmental review for a number of FCC actions, including those involving submarine cables, the 1974 order acknowledged environmental damage from cables in Maine and the U.S. Virgin Islands but illogically found no need for environmental review because the projects violated state law and permits.²⁰

By not considering FCC actions major federal actions and by relying on a broad and unsupported categorical exclusion, countless activities with potentially significant environmental impacts or actual

impacts proceed with little or no NEPA review or public involvement. Unlike many agencies, FCC lacks a NEPA coordinating office and most bureaus within the agency have no NEPA expertise or even awareness of the obligations the statute confers on the agency.

Streamlined Effects: The NEPA Checklist

The agency also skirts its NEPA obligations through its procedures and practice around “effects” consideration. It defines effects narrowly and by doing so, removes actions from public notice and comment. Most egregiously, it delegates the initial consideration of effects to applicants and licensees—telecom companies, for the most part—to determine whether an environmental assessment is warranted or whether the project is categorically excluded, and because the review is not submitted to the FCC, it

typically performs no subsequent review of the applicants’ documentation.

Council on Environmental Quality regulations define effects broadly.²¹ FCC rules and practices limit the consideration of environmental effects. They also limit the extraordinary circumstances that would warrant a higher level of environmental review (i.e., an environmental assessment) and public input for the action—through both its narrow list of circumstances and its narrow interpretation of those circumstances. Those limited circumstances are actions involving facilities that: may affect Indian cultural sites or historic resources (i.e., National Historical Preservation Act triggers); may affect threatened or endangered species or their habitat; may involve significant changes in surface features (such as to wetlands or forests); are in a floodplain if equipment is not raised; exceed radio frequency emissions limitations; involve high-intensity lights in residential areas; are in wilderness areas or wildlife



Tall, guyed towers kill millions of birds a year.

refuges; or are more than 450 feet tall in light of potential impacts to migratory birds.²² These circumstances are referred to as “the NEPA checklist.”

Even so, FCC has in effect gutted most elements of the checklist. For example, for the floodplain trigger,²³ as long as equipment is raised for a facility in a floodplain, no environmental assessment is required, although no evidence of raising the equipment or a local permit need be submitted. Although required by Council on Environmental Quality (which unfortunately approved the 2018 rule change), no cumulative effects of building in floodplains are considered. Similarly, applicants often fail to submit an environmental assessment when they have received a federal or state wetlands permit, so again, no evidence is submitted to the agency or for public review.

To eliminate another environmental assessment trigger, rule changes in 2020 allow projects that affect historic properties and cultural resources to proceed without an environmental assessment.²⁴ “Change in surface features” has in practice required consideration of wetlands impacts (i.e., whether a federal permit is needed), rather than considering large-scale vegetation or soil removal, or grading of sensitive habitats. Thus, even if several acres are bulldozed or dozens of trees cleared, an environmental assessment is not required.

A comprehensive NEPA review for telecommunications infrastructure is both possible and required by other agencies. For instance, the National Telecommunications and Information Administration, which also supports expanding broadband access and adoption, considers a breadth of effects under NEPA that the FCC’s checklist fails

to consider.²⁵ National Telecommunications and Information Administration, for example, requires consideration of cumulative effects.²⁶

Delegation of Review: Fox Guarding the Hen House

Even more extraordinary than its failure to consider a breadth of environmental effects for most of its actions is the FCC’s delegation of consideration of environmental effects to the applicant or licensee. In other words, self-interested parties conduct the NEPA checklist environmental review. Under Council on Environmental Quality rules, the federal agency is ultimately responsible for the environmental document, regardless of who prepares it.²⁷ Yet under FCC procedures, the agency never even sees the

initial environmental review documenting that a categorical exclusion, rather than a more extensive environmental review, is supported—except in the unlikely event it requests checklist documentation following a complaint.

No other agency allows the applicant to make the initial determination of whether a project is categorically excluded or requires an environmental assessment. Other agencies require submission of documentation of that determination or make the determination themselves. Instead, the FCC relies on applicants to be truthful in their dealings with the agency—yet rarely if ever has it enforced against applicants who make false statements on its forms. Applicants submit documentation only when checklist review triggers an environmental assessment. This approach to ensuring compliance with the NEPA rule is at best unrealistic and at worst, a license to deceive.

No FCC oversight ensures that applicants have done their due diligence to

consider the checklist circumstances properly or to even review the circumstances at all. With no agency or public awareness, applicants can simply categorically exclude their projects that involve even larger scale impacts. In East Fishkill, New York, for example, more than 50 trees were cleared from a forested area along a highway known for its scenic views, with no environmental assessment.²⁸

Incorrect, confusing, or inadequate filing instructions further ensure that the applicant's work will be incomplete.²⁹ The instructions themselves fail to even reflect the inadequate rules because they omit Endangered Species Act considerations, do not capture National Historical Preservation Association requirements, omit wetlands concerns, and include outdated floodplain requirements. Similarly, NEPA checklist guidance used until June 2022 did not even reflect the rules on environmental assessment triggers or environmental assessment content requirements.³⁰

The checklist allows for only a very narrow set of environmental assessment triggers. In theory, FCC rules do allow for consideration of non-checklist effects or effects missed in the checklist review—those raised by members of the public and those raised by the FCC on its own motion.³¹ In reality, this almost never happens. The FCC inevitably fails to consider some potentially significant effects outside of the checklist because it relies entirely on the public to identify them, it never initiates its own review, it relies on self-interested applicants to review projects, and it views its mission as facilitating deployment.

Lack of Notice and Public Availability of Documents

Limiting notice and public availability of documents is another way the agency fails to meet fundamental NEPA responsibilities. Council on Environmental Quality rules require both notice of



Stock/Anunt

The effects of cell towers in sensitive areas like coastal zones and wetlands are not fully considered in the FCC's NEPA process.

actions and opportunities for public comment.³² In fact, the rules require that agencies make “diligent efforts” to involve the public in implementing their NEPA procedures.³³ Instead, the FCC makes diligent efforts to exclude the public from raising concerns under NEPA.

Applicants and licensees submit no documentation of their determination that their project is categorically excluded, and the agency does not track categorically excluded actions. With the applicant conducting the initial environmental review of whether the project is categorically excluded by assessing the list of extraordinary circumstances (i.e., the NEPA checklist), as well as preparing the environmental assessment, the burden falls on the public to learn of the proposed action and to raise a potential effect.

But categorically excluded actions, including authorization of certain towers, do not receive public notice; only applications for towers that require registration (generally taller than 199 feet) are put on notice, and those may or may not have associated environmental assessments. In addition to towers under 200 feet not posing an air hazard, these stealth projects that the agency has no record of include small wireless facilities associated with 4G and 5G.

That the public has no access to this information is particularly problematic in the radio frequency context, where applicants are required to meet radio frequency emissions standards or submit an environmental assessment. If the applicants do analyze the checklist and radio frequency studies at all, they routinely categorically exclude small wireless facilities, despite growing public concern about radio frequency associated with such technologies. Without access to the documented checklist, the public has little to no basis on which to refute or comment on checklist conclusions on radio frequency. And given the streamlined process, citizens often find out about facilities only after they are built.

Lack of Transparency: Notice of EAs

While the public is completely disenfranchised on categorically excluded projects, the situation with environmental

assessments is only slightly better. If an environmental assessment is required because the applicant identified a trigger on the NEPA checklist, the tower or other structure must be registered. But it is not the environmental assessment itself that is publicly noticed—it is the application for the tower registration or license modification. The notice serves only to notice for 30 days that an application for an antenna structure at a particular location has been submitted. Members of the public interested in that structure must track down the application in the antenna structure registration system and then see whether an environmental assessment is attached. To find environmental assessments that are “accessible,” a member of the public would have to know that a proposed antenna structure registration included an environmental assessment.

Hence, notice is hardly “public.” Rather than being posted on a readily accessible, centralized site for NEPA documents,³⁴ the registration application and the associated environmental assessment, if done, are buried in a hard-to-access, byzantine website.³⁵ Without project coordinates or an exact site location, it is difficult to get into the website and, once in, to find the environmental documents. To complicate matters further, environmental assessments associated with licensee towers that do not need to be registered (i.e., short towers) are noticed separately and are buried on a different webpage.³⁶

Comments Deemed “Comments”

Even if the public manages to overcome FCC hurdles and ascertain information about a proposed facility, it faces nearly insurmountable obstacles to get its concerns heard or addressed. Under NEPA, the burden of looking at effects is a federal obligation—it is not up to the public to establish a case but merely to apprise the agency of potential effects to consider; the comment period allows the agency to meet its NEPA obligations by giving the public an opportunity to raise effects or alternatives not considered in the environmental review process.

But rather than a standard, fair, or open comment process in which the

agency considers and responds to concerns raised by the public, the FCC administers an adversarial complaints process that requires the public to meet a high burden of proof about a potential effect that may have been overlooked in the checklist or inaccurately documented.³⁷ With a process that unfairly shifts the burden of raising and establishing environmental concerns from the agency to the public, the outcome is always the same. The FCC virtually never finds that complaints are valid. To dismiss them or resolve them in the applicant's favor so that the project can proceed, it routinely finds that the complainant has not provided specific enough detail or an adequate scientific showing for the agency to consider an effect.

Compounding the unlikelihood that the public will learn about a project and be able to weigh in is a timing issue. When the public finds out about a project that the applicant has deemed categorically excluded (either by doing the checklist or failing to do the checklist), there is no timeline to comment on or complain about the project. With no notice and no timeline for these projects that proceed with no agency awareness, the public often learns about the projects when construction begins or, just as likely, when the facility is already built.

Because the applicant need not consider aesthetics, for example, a tower visible from a state park could be deemed categorically excluded and built before the public sees the impact to its viewshed. Rarely, if ever, will the FCC decide an environmental assessment is required under the circumstances because the applicant ostensibly did what was required of it by assessing the minimal checklist. Furthermore, in terms of failure to comply with NEPA, environmental assessments are submitted so late in the process that a meaningful alternatives analysis—a hallmark and requirement of NEPA³⁸—is foreclosed.

Aesthetic Effects: The Greatest Impacts Never Addressed

Perhaps most egregious is the agency's approach to aesthetic impacts.

Applicants should be required to consider aesthetic impacts because, by the FCC's own account in its rulemaking, visual impacts are by far the most significant impact a tower could have.³⁹ As originally promulgated, FCC's NEPA regulations triggered an environmental assessment when facilities were to be located "in areas which are recognized either nationally or locally for their special scenic or recreational value."⁴⁰ Again and again in the rulemaking, visual effects were cited as the greatest impact, as well as an impact to be mitigated.⁴¹ Yet in 1985, the FCC decided the standard was "unduly vague," and that it was unnecessary for applicants to submit environmental assessments in cases that "may raise aesthetic concerns."⁴² It also noted that "aesthetic concerns may more appropriately be resolved by local, state, regional or local land use authorities"⁴³—although NEPA is an independent federal obligation.

On the rare occasion when the FCC does consider aesthetics, its examination is generally limited to consideration of impacts to nationally designated scenic trails and historic sites (the latter falling under visual effects under National Historical Preservation Association) or to national parks, although nothing in NEPA or Council on Environmental Quality rules limits

consideration of aesthetic impacts solely to those designated areas. This practice precludes consideration of impacts to, for example, scenic tourist areas or state or locally designated battlefields and parks. In 2014, AT&T built a tower in Fort Ransom, North Dakota, visible from a nearby National Scenic Trail and Scenic Byway, without having to consider aesthetic impacts.⁴⁴ Towers have been built in the viewsheds of, for example, a National Scenic Trail in Vergennes, Michigan, an iconic bridge in New York, a civil rights site in Selma, Alabama, and on Dewey Beach, Delaware's sand dunes, with little notice, consideration of visual impacts, or mitigation.

Little Compliance, Little Enforcement

With no oversight to ensure applicants have done the due diligence required to consider the checklist and no on-the-ground inspections, lack of compliance with the rules is rampant

Large-scale projects with multiple facilities built without NEPA review include hundreds of towers in Alaska built by GCI.⁴⁵ Between 2001 and 2015, T-Mobile built hundreds of towers in 22 states without environmental review.⁴⁶

In New Mexico and Texas, Plateau Telecommunications built 58 towers with no National Historical Preservation Association review.⁴⁷ Telalaska built 28 towers near and in sensitive areas in Alaska with no repercussions.⁴⁸ With no Enforcement Bureau action, the Wireless Telecommunications Bureau and Alliant Energy Corporation agreed in 2017 to a compliance plan after Alliant built 109 towers and 93 poles without NEPA review.⁴⁹ Railroad non-compliance was so widespread that the FCC entered into a settlement agreement with several railroads that created a \$10 million cultural resources fund for 11,000 constructed poles that had not gone thru National Historical Preservation Association or NEPA review.⁵⁰

Smaller-scale projects and individual towers also have significant impacts. For example, in 2019, licensees in Broward County, Florida, cleared 36 trees and built a driveway through a forested wetland before completing environmental review.⁵¹ In Sabana Grande, Puerto Rico, a tower builder in 2014 bulldozed critical habitat for an endangered bird.⁵² Dozens of sacred sites have been similarly destroyed or damaged across the country, as have multiple cultural resources and historic and archaeological sites.



Although towers can alter iconic views, the FCC does not require licensees to consider aesthetic impacts.



Shutterstock

Cell towers are altering and marring views across the country.

Many of these failures to comply with environmental requirements come to light as National Historical Preservation Association violations, rather than as NEPA violations, because the National Historical Preservation Association process, as part of the checklist, requires photo documentation and official state and tribal review. Complaints from these officials or the public and self-reporting—often unintentionally with photos submitted through increasingly rare environmental assessment submissions⁵³—are generally the sole bases for enforcement.

Conveniently for an agency intent on deployment, the FCC's Enforcement Bureau operates under a one-year statute of limitations—one year from the time the facility was built, not from when the agency learned of the violation. As a result, by the time the agency learns of the violation and decides to take action, it is often prohibited from levying fines against the violator.

When the agency does take action, it amounts, with few exceptions, to a slap on the wrist. In 2016, six licensees got admonishment letters with no penalties and little agency publicity.⁵⁴ For the past decade or

so, Wireless Telecommunications Bureau admonishment letters, which number from zero to six per year, warn of the potential for increased fines and punishments if violators break rules again. But the agency could not fine the violators and does not track the letters. Fines are rare and if levied, *de minimis*.⁵⁵ At most, penalties are ordered once or twice a year, and tower removal, which would be a reasonable and authorized remedy for violations, is never ordered.

In one instance, clearing guy-wire areas for a 1,500-foot broadcast tower in Punta Gorda, Florida, destroyed 2.6 acres of treed habitat for bonneted bats, an endangered species. As mitigation, the applicant paid \$28,000 to the U.S. Fish and Wildlife Service, while the FCC issued a Finding of No Significant Impact and imposed a fine of \$28,000.⁵⁶

Ex Post Facto NEPA: A Concept Not Contemplated by NEPA

To address instances of noncompliance, the agency has instead devised an

ex post facto NEPA process under which the violators conduct and submit an after-the-fact checklist or environmental assessment. If an environmental assessment is required, these half-built or fully built projects then receive the FONSI that are a prerequisite for construction. Enforcement action may, but more likely will not, follow; with no repercussions, a 485-foot broadcast tower in Chattanooga, Tennessee, was built and operating for months before it got its FONSI in 2021.⁵⁷

Since 2002, the agency has used a clearance process for noncompliant towers (i.e., those that have not gone through the National Historical Preservation Association and NEPA process).⁵⁸ For example, on March 28, 2012, the FCC "cleared" with a post-construction review the 58 towers that Plateau Telecommunications had built in violation of historic preservation procedures.⁵⁹ Other elements of the requisite NEPA review were ignored—and are often ignored in this process.

Regardless, NEPA may not be done retroactively, and the substantive value of this follow-up exercise is unclear. It



Beyond visual impacts, cell towers built in pristine areas can affect sensitive species and ecosystems.

is hard to assess damage to a site never evaluated for the presence of, for example, wetlands, sensitive species, historic resources, or sacred sites before clearing took place. More importantly, given the dearth of documentation, little means for the agency to discover violations, and lack of oversight at the agency, it is unclear just how many projects that impact environmentally sensitive areas are constructed with improper or no checklist review, or get started without waiting for a FONSI to construct; most of the sites where environmental damage occurred and the degree of destruction will never be known.

By routinely clearing towers with post-construction checklist reviews, the agency creates incentives for tower companies and carriers to build their towers and, if necessary, do paperwork later. Given the lax enforcement and the statute of limitations issue, this approach

from industry's perspective would be quite reasonable.

Conclusion: Prospects for a More Accountable FCC

Clearly, the FCC's NEPA process falls short of what NEPA and Council on Environmental Quality require.

- It ignores major federal actions requiring environmental review, such as its distribution to industry of billions of dollars that support build-outs for updated wireless service, or improperly deems certain major federal actions non-major federal actions to circumvent NEPA.
- Its NEPA rules create an unsupported and overbroad categorical exclusion so that, for example, satellite licensing and submarine cable licensing are excluded from review.

- With little oversight or tracking, it delegates environmental review of NEPA determinations to industry proponents of the project.
- It fails to vigorously enforce its rules so that industry noncompliance is rampant.
- It fails to provide adequate notice and opportunities for public comment.
- It fails to make environmental documents, including radio frequency emissions studies, publicly available or readily accessible.
- It routinely ignores or dismisses public comments and concerns and places an unfair burden of proof on the public when it raises concerns.

These practices serve to facilitate deployment for carriers while ignoring environmental rules and the public. Besides environmental costs, the FCC's approach bespeaks a lack of transparency

and accountability that undermines good governance and erodes democracy. It also bespeaks an agency completely captured by the entities it is tasked with regulating.

Recent Biden-era NEPA implementing rules⁶⁰ require agencies to revisit their NEPA rules and procedures by September 2023.⁶¹ They also require that the agencies have the capacity to comply with NEPA,⁶² something the FCC has to date lacked. Perhaps when Council on Environmental Quality reviews the FCC's procedures this time, it will scrutinize the rules more carefully and hold the agency to a higher standard for NEPA compliance.

An environmental and public lands policy attorney with over 30 years of experience, including in agencies, Congress, and academia, **Erica Rosenberg** worked at the FCC's Wireless Telecommunications Bureau from 2014 to 2021; for the last six of those years, she was Assistant Chief of the Competition and Infrastructure Policy Division.

NOTES

1. Unlike macro-cells or wireless cell towers, a small cell installation consists of radio equipment and antennas placed every few meters on structures such as street-lights, buildings, or poles.
2. 42 U.S.C. §4371 *et seq.*
3. Telecommunications Act of 1996, Section 704, 47 U.S.C. §332.
4. 40 CFR §1508.18 (1978). Note: Unless otherwise noted, NEPA regulations cited are 1978 regulations (i.e., pre-Trump and Biden-era regulations). The FCC was bound by those regulations until April 2022.
5. 40 CFR §1508.18.
6. 40 CFR §1508.8.
7. 40 CFR §§1501.2(d)(2), 1.1501.7(a)(1), 1.1503.1, 1.1506.6.
8. Other agencies, such as the National Telecommunications and Information Administration (NTIA), do conduct NEPA reviews for such actions.
9. See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment ("Infrastructure Order") (WT Docket 17-79, FCC 18-30), (March 22, 2018), 33 FCC Rcd 3102 (4).
10. See CTIA blog, March 27, 2018 [ctia.org/news/what-is-a-small-cell](https://www.ctia.org/news/what-is-a-small-cell).
11. See Infrastructure Order, Rosenworcel dissenting statement.
12. *Id.*
13. *Id.*

14. *United Keetoowah Band of Cherokee Indians v. FCC*, 933 F.3d 728 (D.C. Cir. 2019).
15. *Id.* at 741. Between the time the Order was issued and the decision handed down, however, countless small wireless facilities were deployed without NEPA review.
16. Final Programmatic Environmental Assessment for the Antenna Structure Registration Program, FCC (March 13, 2013).
17. See 40 CFR §1508.7(cumulative impacts); §1508.8(b) (effects include cumulative).
18. 47 CFR §1.1306(a).
19. 49 FCC 2d 1313, para. 14(a) (1974); see also 47 CFR §1.1306 Note 1. (EA requirements do not "encompass the construction of new submarine cables systems.")
20. See *In the matter of Public Employees for Environmental Responsibility*, FCC 01-319, n. 46.
21. See §1501.3, §1508.1(g)(1) (definition of effects includes aesthetic, health, economic, etc.).
22. 47 CFR §1.1307.
23. 47 CFR §1.1307(a)(6).
24. Declaratory Ruling and Notice of Proposed Rulemaking. *In the Matter of Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, FCC 20-75A (June 9, 2020), paras. 45-50, 35 FCC Rcd 977.
25. https://broadbandusa.ntia.doc.gov/sites/default/files/2021-07/July%202021%20B%20Infra%20Webinar_FINAL%20Presentation_0.pdf, p. 23.
26. See *id.* at p. 50.
27. See generally 40 CFR §1506.5.
28. See letter from Michael S. Fishman, Conservation Biologist, Edgewood Environmental Consulting, to Noelle Rayman USFS biologist, Cortland, NY, November 13, 2020, Re: Determination of Adverse Effects from Wireless EDGE-WEC-NY-23 Cell Tower 90 Carpenter Road, East Fishkill, Dutchess County, NY 41°34'40.37"N, 73°47'03.84"W.
29. See, e.g., Form 601 instructions (<https://www.fcc.gov/sites/default/files/fcc-form-601.pdf>); Item 22.
30. See "FCC Environmental Assessment" (checklist) (undated).
31. See 47 CFR §1.1307(c) and (d).
32. 40 CFR §1506.6 (provide public notice of availability of environmental documents).
33. 40 CFR §1506.6(a).
34. 40 CFR §1506.6 ("provide public notice of NEPA related hearings ... and the availability of environmental documents").
35. [wireless2.fcc.gov/UsApp/AsrSearch/AsrSearch.jsp](https://www.fcc.gov/AsrSearch/AsrSearch/AsrSearch.jsp) (application) and [wireless2.fcc.gov/UsApp/AsrSearch/AsrSearch/AsrSearch.jsp](https://www.fcc.gov/UsApp/AsrSearch/AsrSearch/AsrSearch.jsp) (environmental notice).
36. [wireless2.fcc.gov/UsApp/AsrSearch/AsrSearch/AsrSearch/AsrSearch/AsrSearch.jsp](https://www.fcc.gov/UsApp/AsrSearch/AsrSearch/AsrSearch/AsrSearch/AsrSearch.jsp).
37. In *American Bird Conservancy, v. CITA*, 516 F.3d 1027, 1033 (D.C. Cir. 2008), the court admonished the FCC for setting too high a standard.
38. See 40 CFR §1508.9 (EAs include consideration of alternatives).
39. See, e.g., 49 FCC 2d 1313 (1974), para. 32 ("we have stressed the visual or aesthetic impacts of [such] facilities as their primary environmental effect").

40. *Id.* at para. 14.
41. See, e.g., *id.*, at paras. 18, 23, 27, 28, 32.
42. 986 W.2d 29182, 60 Rad. Reg. 2d, para. 11 (November 25, 1985).
43. *Id.* at para. 122.
44. AT&T Mobile Services, Inc. Construction of Tower Fort Ransom, North Dakota; Complaints of the Shoneyne River Valley National Scenic Byway, Don Busta, Judith L. Morris, and the North Country Trail Ass'n, Memorandum Opinion and Order, 30 FCC Rcd 11023, 11032, para. 28 (WTB/CIPD 2015).
45. See Consent Decree (DA 15-1179) (October 20, 2015).
46. Phoenix Towers International acquired the towers and in 2016, sought to bring them into compliance.
47. 27 FCC Rcd. 2972 (March 29, 2012) (letter to Gregory W. Whitaker from Dan Abeyta, WTB).
48. See email from Amy Summe, Shannon and Wilson, to Erica Rosenberg, Assistant Chief, Competition and Infrastructure Policy Division, Wireless Bureau, FCC re: Towers, after-the-fact NEPA compliance, February 14, 2020.
49. See email from Michelle Yun, Senior Attorney, Alliant to Jianming Shang, Attorney Advisor, Wireless Telecommunications Bureau, FCC and attachment "Final Compliance Plan.pdf" (May 23, 2017).
50. <https://www.fcc.gov/document/fcc-announces-actions-facilitate-ptc-implementation>; <https://www.indianz.com/News/2014/06/04/tribes-take-role-in-major-rail.asp>.
51. See ASR No. 1136027, Broward County, West Hollywood Telecommunications Facility, filed November 2019 (attached EA).
52. See ASR No. A1062663, Wise Towers, filed December 29, 2016 (attached EA and filings).
53. See, e.g., ASR No. A1179538 (attached EA, dated December 8, 2020, for a 610-foot tower in Weedville, PA indicates that the applicant cleared several acres of sensitive species habitat before completing environmental review). (Appendix III, pp. 17-18).
54. See, e.g., letter to Kenneth Meyers, President and CEO, United States Cellular Corporation from Jeffrey Steinberg, Deputy Chief, CIPD, WTB, June, 16, 2016, re: Violation of FCC Environmental Rules.
55. See, e.g., in re: Western Wireless Corp, FCC 03-109 (May 6, 2003) (tower built near several historic sites and operating in violation of environmental rules fined \$200,000). The fine was ultimately rescinded on November 17, 2004.
56. See Consent Decree, In re: Fort Myers Broadcasting Company (DA21-1365) (November 2, 2021).
57. See FONSI letter to Brian Fuqua, Greater Chattanooga Public TV Corp from Erica Rosenberg, Assistant Chief, Competition and Infrastructure Policy Division, Wireless Bureau, FCC (April 14, 2021).
58. In 2009, over 1,000 AT&T towers built pre-2001 without NEPA documentation were "cleared." Letter from Jeffrey Steinberg Deputy Chief, SPCD to Jeanine Poltronieri, AT&T (January 16, 2009).
59. 27 FCC Rcd 2972 (March 29, 2012) (letter to Gregory W. Whitaker from Dan Abeyta, WTB, FCC).
60. 40 CFR §1506.5 (April 20, 2022).
61. See 40 CFR §1507.3 (2022).
62. See *id.*

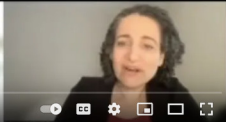
Environmental Procedures at the FCC: A Case Study in Corporate Capture

by Erica Rosenberg

With activities including millions of miles of fiber optic cables and tens of thousands of towers, cell towers and antennas, and hundreds of thousands of small cells, the telecommunications industry has a significant environmental footprint. Despite this, the Federal Communications Commission (FCC) has failed to take any meaningful steps to address the environmental impacts of its actions. This report examines the FCC's environmental record and its failure to meet its obligations under the National Environmental Policy Act (NEPA) in multiple and significant ways.

Discover a wealth of additional and related environmental reports, many of which, such as small reports and free e-books, are not properly considered by the FCC's environmental review process.

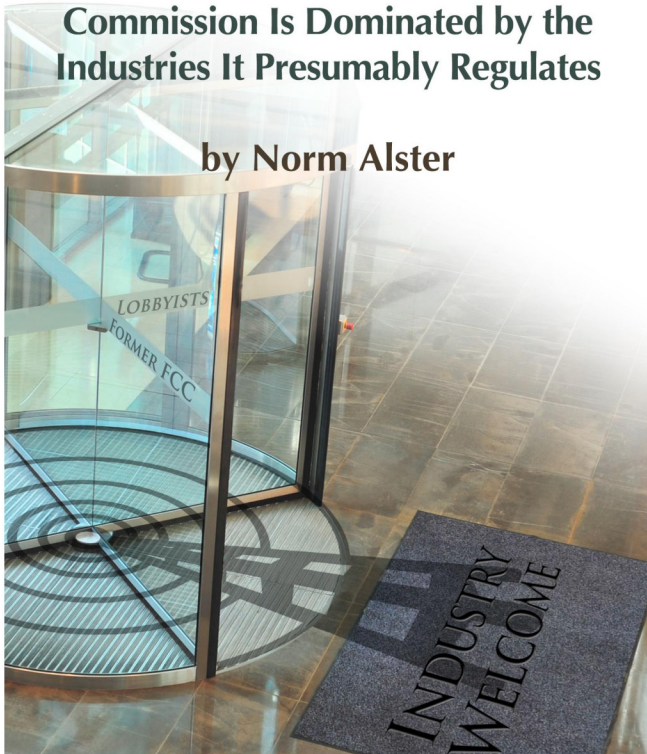
The FCC intentionally and routinely fails to meet its environmental obligations and epitomizes “regulatory capture.”



Captured Agency:

How the Federal Communications
Commission Is Dominated by the
Industries It Presumably Regulates

by Norm Alster



www.ethics.harvard.edu

COMMENT

Open Access



Scientific evidence invalidates health assumptions underlying the FCC and ICNIRP exposure limit determinations for radiofrequency radiation: implications for 5G

International Commission on the Biological Effects of Electromagnetic Fields (ICBE-EMF)^{*}

Abstract

In the late-1990s, the FCC and ICNIRP adopted radiofrequency radiation (RFR) exposure limits to protect the public and workers from adverse effects of RFR. These limits were based on results from behavioral studies conducted in the 1980s involving 40–60-minute exposures in 5 monkeys and 8 rats, and then applying arbitrary safety factors to an apparent threshold specific absorption rate (SAR) of 4W/kg. The limits were also based on two major assumptions: any biological effects were due to excessive tissue heating and no effects would occur below the putative threshold SAR, as well as twelve assumptions that were not specified by either the FCC or ICNIRP. In this paper, we show how the past 25 years of extensive research on RFR demonstrates that the assumptions underlying the FCC's and ICNIRP's exposure limits are invalid and continue to present a public health harm. Adverse effects observed at exposures below the assumed threshold SAR include non-thermal induction of reactive oxygen species, DNA damage, cardiomyopathy, carcinogenicity, sperm damage, and neurological effects, including electromagnetic hypersensitivity. Also, multiple human studies have found statistically significant associations between RFR exposure and increased brain and thyroid cancer risk. Yet, in 2020, and in light of the body of evidence reviewed in this article, the FCC and ICNIRP reaffirmed the same limits that were established in the 1990s. Consequently, these exposure limits, which are based on false suppositions, do not adequately protect workers, children, hypersensitive individuals, and the general population from short-term or long-term RFR exposures. Thus, urgently needed are health protective exposure limits for humans and the environment. These limits must be based on scientific evidence rather than on erroneous assumptions, especially given the increasing worldwide exposures of people and the environment to RFR, including novel forms of radiation from 5G telecommunications for which there are no adequate health effects studies.

Keywords: Federal Communications Commission (FCC), International commission on non-ionizing radiation protection (ICNIRP), Radiofrequency radiation (RFR), Exposure limits, Exposure assessment, Radiation health effects, Reactive oxygen species (ROS), DNA damage, 5G, Scientific integrity, Cell phone^{*}, Mobile phone^{*}

Introduction

In establishing exposure limits for toxic or carcinogenic agents, regulatory agencies generally set standards that take into account uncertainties of health risks for the general population [1] and for susceptible subgroups such as children [2]. That approach has not been applied in the same way to the setting of exposure limits for

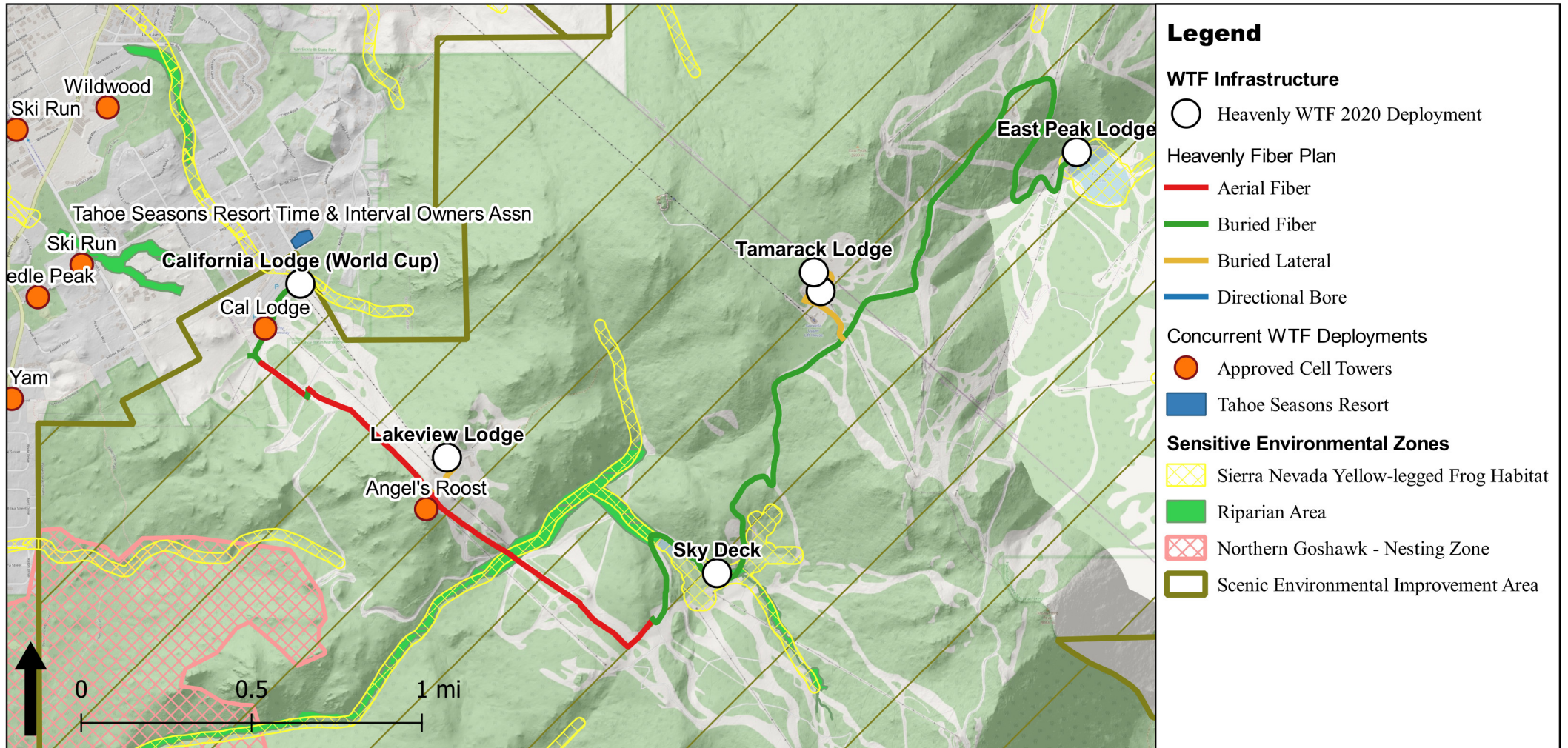
^{*}The terms cell phone and mobile phone are used interchangeably in this commentary. cell phone is the term used in the United States, while mobile phone is the term used in most of Europe.

^{*}Correspondence: ron.melnick@gmail.com Tucson, USA

[†]Tucson, USA



Heavenly Fiber Plan: Regulatory Issues



Project May Pose Significant Effect on the Environment

Numerous research studies have found that cell tower radiation causes mortality in frogs and amphibians [e.g., Balmori, Alfonso. (2010). Mobile Phone Mast Effects on Common Frog (*Rana temporaria*) Tadpoles: The City Turned into a Laboratory. *Electromagnetic biology and medicine*. 29. 31-5. DOI: [10.3109/15368371003685363](https://doi.org/10.3109/15368371003685363)]. A NEPA “categorical exclusion” cannot be issued because there exists substantial evidence that the WTF's may have a significant effect on the environment, particularly an endangered frog and protected birds [36 CFR § 220.6(b)(1)(i),(iii); 50 CFR § 17.11(h); 79 FR 24255; see also 16 U.S.C. § 497b; 47 CFR § 1.1307(a)(3); 40 CFR § 1508.8]. The affected area contains substantive habitat for endangered, rare, or threatened species, and could result in significant effects relating to wetlands [50 CFR § 10.13; EO 13186; 16 U.S.C. § 700 et. seq.; cf. 14 CCR §§ 15192(d), 15097(c)(2), 15206(b)(4)(A),(b)(5)] or water quality [cf. 14 CCR § 15332]. The antennas would expose both nesting and migratory birds—including bald eagles—to radiofrequency radiation in excess of human exposure limits [47 CFR § 1.1310]. The miles of aerial fiber also blight the visual quality of the TRPA designated "Heavenly Valley Ski Resort" Scenic Recreation Environmental Improvement Area. This is an extraordinary Congressionally protected region warranting further analysis and documentation in an EA or an EIS [36 CFR § 220.6(b)(1)(iii); see also Public Law 96551; Public Law 96586; EO 13057].

TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD
NOTICE OF PUBLIC HEARINGS

The Governing Board/Committee will be held at the **Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV.** Pursuant to TRPA Rules of Procedure, 2.16 Teleconference/Video Conference Meetings and Participation, Board members may appear in person or on Zoom. Members of the public may observe the meeting and submit comments in person at the above location or on Zoom. Details will be posted on the day of the meeting with a link to Zoom.

NOTICE IS HEREBY GIVEN that at its regular meeting to be held on **Wednesday, April 26, 2023**, the **Regional Plan Implementation Committee** commencing at **10:00 a.m.**, and the **Governing Board** commencing at **11:00 a.m.**, at the **Tahoe Regional Planning Agency**, the Governing Board/Committee of the Tahoe Regional Planning Agency will conduct a public hearing on the following:

- 1) Informational Presentation on proposed amendments to the City of South Lake Tahoe's Tahoe Valley Area Plan and Tourist Core Area Plan addressing, increased consistency with recently amended TRPA regulations and state regulations, increased housing opportunities and community equity in appropriate areas, increased density and the establishment of minimum densities in town centers, and general improvements to the design and development standards (RPIC);**
- 2) Proposed amendments to Washoe County's Tahoe Area Plan to Allow Single Family Condominium Uses in Special Area 1 of the Incline Village Commercial Regulatory Zone (possible action) (GB);**
- 3) Proposed code amendments to the "Achievable" deed restriction category definition, including changes to Sections 52.3.4 and 90.2, and an amendment to Section 34.3.3 regarding driveways for accessory dwelling units (possible action) (GB).**

Julie W. Regan
Executive Director

Published: March 31, 2023

TAHOE REGIONAL PLANNING AGENCY
TAHOE LIVING: HOUSING AND COMMUNITY
REVITALIZATION WORKING GROUP
COMMITTEE OF THE ADVISORY PLANNING COMMISSION
NOTICE OF PUBLIC MEETING

The Tahoe Living: Housing and Community Revitalization Working Group will be held at the **Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV.** Pursuant to TRPA Rules of Procedure, 2.16 Teleconference/Video Conference Meetings and Participation, members may appear in person or on Zoom. Members of the public may observe the meeting and submit comments in person at the above location or on Zoom. Details will be posted on the day of the meeting with a link to Zoom.

NOTICE IS HEREBY GIVEN that on **April 21, 2023** , via **Zoom and at the Tahoe Regional Planning Agency**, the Tahoe Living: Housing and Community Revitalization Working Group, a Committee of the Tahoe Regional Planning Agency (TRPA) Advisory Planning Commission, commencing at **9:00 a.m.** , will conduct a meeting at which the following items will be discussed and possible direction may be provided to staff: 1) Discussion and recommendation (possible action) of height, density, and coverage options to encourage affordable and workforce housing, including amendments to Chapters 12, 13, 30, 31, 37 and 90.

Julie W. Regan
Executive Director

Published: March 31, 2023

NOTICE IS GIVEN that on **Thursday November 3, 2022** commencing at **2:00 p.m.**, the **Nevada Tahoe Regional Planning Agency (NTRPA)** will meet at the Division of Health and Human Services Carson City Administrative Office Conference Room 149 1470 E College Parkway Carson City, NV. This will be a hybrid meeting with both in person and virtual attendance via Microsoft Teams, meeting ID 226 271 100 234. The public is invited and encouraged to participate in person or by phone at 775-321-6111, and when prompted, enter the meeting code 685 157 427#. Public comment may also be submitted via email prior to the meeting. Please submit public comments to scarey@lands.nv.us by 5 PM on November 2, 2022. The agenda is as follows: **1)** Call to Order; **1a)** Roll Call; **1b)** Pledge of Allegiance; **1c)** Approval of Agenda – For Possible Action; **1d)** Approval of Minutes of the August 1, 2022 Meeting – For Possible Action; **2)** **Public Comment**; **3)** Discussion and Selection of Nevada Member at Large – For Possible Action; **4)** Election of Chair – For Possible Action; **5)** Election of Vice Chair – For Possible Action; **6)** Recognition of Service to NTRPA for Secretary Barbara Cegavske – For Possible Action; **7)** Recognition of Service to NTRPA for Mark Bruce – For Possible Action; **8)** Recertification of the Certified Base Data for the Tahoe Nugget Structure Housing Gaming in Stateline – For Possible Action; **9)** Overview of Roles and Responsibilities of Nevada Tahoe Regional Planning Agency – Informational Only; **10)** Report of the Executive Officer on Activities of the Agency: August 2022 – October 2022; **11)** Board Member Comments; **12)** **Public Comment**; **13)** Adjournment

Published: October 28, 2022

TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD
NOTICE OF PUBLIC HEARINGS

The Governing Board/Committee will be held at the **Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV.** Pursuant to TRPA Rules of Procedure, 2.16 Teleconference/Video Conference Meetings and Participation, Board members may appear in person or on Zoom. Members of the public may observe the meeting and submit comments in person at the above location or on Zoom. Details will be posted on the day of the meeting with a link to Zoom.

NOTICE IS HEREBY GIVEN that at its regular meeting to be held on **Wednesday, May 24, 2023**, the **Regional Plan Implementation Committee** commencing at **9:30 a.m.**, and the **Governing Board** commencing at **10:30 a.m.**, at the **Tahoe Regional Planning Agency**, the Governing Board/Committee of the Tahoe Regional Planning Agency will conduct a public hearing on the following: **1) Informational Presentation** on proposed amendments to the City of South Lake Tahoe's Tahoe Valley Area Plan and Tourist Core Area Plan that would expand housing opportunities and community equity by increasing density allowances and establishing minimum densities in town centers, allowing more housing types such as employee housing, shared housing, and group home facilities, improvements to residential design standards to help streamline project review, and policies to support town center revitalization using special events, coverage exemptions, and CFA policy clarifications. Additionally, amendments would increase consistency with recently amended TRPA regulations and state regulations regarding accessory dwelling units and density bonuses for affordable housing (**RPIC**); **2) Proposed Amendments** to Washoe County's Tahoe Area Plan to Allow Single Family Condominium Uses in Special Area 1 of the Incline Village Commercial Regulatory Zone (possible action) (**GB**).

Julie W. Regan
Executive Director
Published: April 28, 2023

TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

TRPA
Stateline, NV

February 26, 2020

Meeting Minutes

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Vice Chair Mr. Bruce called the meeting to order at 10:20 a.m.

Members present: Ms. Aldean, Mr. Beyer (by phone), Ms. Berkbigler, Mr. Bruce, Mr. Cashman (by phone), Mrs. Cegavske (by phone), Ms. Faustinos, Ms. Gustafson, Mr. Hicks, Ms. Laine, Mr. Lawrence, Ms. Novasel, Mr. Yeates (by phone)

Members absent: Mr. Rice, Mr. Shute

II. PLEDGE OF ALLEGIANCE

III. PUBLIC INTEREST COMMENTS

Greg Lien, Tahoe City Attorney said he provided two reports; one from Cindy Sage who is an expert in EMF standards that can be applied for the benefit of the protection of the environment. The second report is from Dr. Martin Pall, expert in the impacts of electromagnetic frequency radiation on forest health, human health, and other living things. There's a rising level of awareness that the new technologies that are being produced are not benign. While humans maybe affected to some degree, plants and animals are affected to a greater degree. They kill the top layer of soils in the stream environment zone areas affecting full functioning SEZ soils and can also increase the fire hazard. Five G is already being rolled out at Lake Tahoe. The higher the frequency, the more the danger. It's no longer a straight analog signal in these communication devices, it's a lot of data that's pulsed. The physiological avenue of harm to living things is called voltage regulated calcium gates. Those exists in all life and that pulse is what trips it into dis-regulation and causes a number of negative impacts. The maximum number in a meeting room is 100, this meeting room is exceeding that. The peak levels here are close to the top and this room is not close to a cell tower. This has a direct impact on the environment that has not been evaluated. In 1987, when the Regional Plan was created, there were very little to no wireless telecom available. The number of cell sites are expected to grow exponentially. The Federal Communications Commission standards are outdated, and they don't apply beyond human exposure. The duty of the board members is to protect Lake Tahoe's sensitive environment. There are not standards in TRPA's Code of Ordinances, they are not evaluating anything, projects are being taken in with the completed checklist and if findings are made, these move forward. There is a severe risk that TRPA will not be able to hold to their non-degradation standard and there'll be problems in threshold attainment. He suggested that TRPA put a moratorium for at least the short term because the 5G findings cannot be made.

David Jinkens, South Lake Tahoe resident said he urged the board and staff to cease the

opportunity to develop a comprehensive strategy and plan for deployment of cell facilities and 112 foot tall towers in the Lake Tahoe basin. The current system of random deployment of towers and facilities in cities and counties by the telecommunication companies doesn't give policy makers the opportunity to review their entire deployment plan upfront, do the appropriate environmental assessment, and receive public and interested party input that all major projects in the basin should require. Within the Tahoe basin, the board is the planning leader. Deployment of telecommunications facilities and 112 foot tower projects need to have the scrutiny and organization one expects for this environmentally rich basin. A comprehensive deployment plan and its evaluation would be good for the region, the environment, the people who live and visit here, and good for companies who would have some reassurance of what they can or can't do. Good planning and protection of the environment requires such a comprehensive approach. All of us, want good cell and telecommunication services and want the deployment of these facilities to be based on a sound known and environmental review plan. The City of South Lake Tahoe is already moving to upgrade their standards for cell tower and facilities deployment. On February 20, the City's Planning Commission heard a draft ordinance that had a lot of public comments but is better than what the current standard is. That draft ordinance will go to the City Council for review and then within 60 to 90 days that ordinance should be adopted. He urged the board that until a comprehensive cell facilities deployment is approved, no such facilities should be approved in the basin.

Nikki Florio, founder and director of Bee Heroic said prior to that she ran an integrated sustainable business lifestyles and education program, Tahoe Regional and Environmental Education. She's done research on the collapse of the great pollination. It's the scope of winged and terrestrial insects, birds, bats, and small mammals that pollinate the ecosystems and food systems. The primary factors behind their losses which have to do with climate, agrochemical, and the new telecom technologies for 4G and 5G. These are different technologies and have impacts on the environment from the ground up. For soil microbes they stop production and impact different types of fungi in the soils that are needed for plant growth, especially in the forest for plants. The 4G and 5G range is going to gigahertz from megahertz. This is around one million pulses per second to one billion. This splits the single and double DNA strand in flowers and plants and makes them toxic. The wildlife and insects will be poisoned. When insects, animals, waterfowl, and amphibians are near these towers they are more susceptible because they have a different type of magnetite in their blood. Insects and bees will have their exoskeleton damaged and highly susceptible to diseases. Bee Heroic finished a two year, multi-state tour that showed where the 5G towers are, there isn't any insects or birds around any of the flowering plants. When trees are damaged especially the Conifers with the 5G frequencies that are 30 to 300 gigahertz which is an extremely high range for plants and increases the terpenes around 100 times. Information can be found at Bee Heroic, 5G Space Appeal, or Physicians for Safe Technology on 5G. These professionals have been working on this for decades.

Carole Black, Incline Village resident said none of us want a catastrophe like Orinda or Paradise or children finding guns in short term rentals. The area plan and ordinances that protect us and the current published proposals, although there may be some revisions have significant gaps. The draft ordinance is thin on neighborhood compatibility regarding neighborhood character, density intensity, and there's some tiers that are very generous without any neighbor input for impacts. The area plan was substantively revised in October 2019. There's been a lot of changes and almost no community meetings, although a report states that there's been several. It needs more

GOVERNING BOARD

March 25, 2020

Given these concerns about Covid-19, that is contrary to the express direction of the Governors of California and Nevada, and the President regarding best public health practices. In order to continue with the meeting where everyone is in a remote location we need to deviate from the Rules of Procedure. We are able to do that under TRPA's Rules of Procedure, Section 2.4.4.D. This allows deviation with five affirmative votes from each state. We'll be preempting six different rules in the Code of Ordinances; Sections 2.13.3, 2.16.4, 2.16.5, and 2.16.6. Those require that either a quorum to be in the basin and then regarding how the conduct of individual locations where remote participants are participating. That being open to the public and having materials being available at that particular site. Staff is seeking to lift that and allow public participation through the means being discussed here. To continue this webcast meeting, these rules will need to be lifted. The other item to be concerned with is are the procedures consistent with the open meeting law of Nevada which is generally what TRPA follows because it is stricter of the two states. A recent directive from the State of Nevada that has directed that certain provisions can be lifted in order to allow remote participation. All these requirements are being followed by TRPA to be consistent with the open meeting law.

Board Comments & Questions

None.

Public Comments & Questions

Ellie Waller said she agreed that in these extraordinary times that using online meetings is necessary and hope you'll find a more simplified system.

Board Comments & Questions

Mr. Bruce made a motion to deviate from Rules of Procedure Section 2.16 as set forth in the staff report to facilitate virtual Governing Board meetings during the COVID-19 outbreak and authorizing the Executive Director in consultation with Governing Board Chair and the Agency's legal counsel to adjust these deviations as necessary to promote public health and meeting participation.

Ayes: Ms. Aldean, Mr. Beyer, Ms. Berkgigler, Mr. Bruce, Mr. Cashman, Mrs. Cegavske, Ms. Faustinos, Ms. Gustafson, Ms. Laine, Mr. Lawrence, Ms. Novasel, Mr. Rice, Mr. Yeates
Motion carried.

III. PLEDGE OF ALLEGIANCE

IV. PUBLIC INTEREST COMMENTS

Ellie Waller said the use of the Webinar for first time users is a bit more complicated than anticipated. She's hoping for future meetings a more simplified system will be utilized.

Heidi Teachout said with millions of Americans now working and learning at home, many of us are spending more and more time online. While the internet offers us many opportunities for communication, exploration and collaboration, in many homes it brings with it an unseen problem: exposure to radio-frequency microwave radiation ("wireless radiation") that is emitted from all wireless devices, including cell towers, laptops, tablets, game consoles and smartphones.

GOVERNING BOARD

March 25, 2020

An increasing number of doctors and public health experts are recognizing that our almost-constant exposure to wireless radiation is impacting our health. Scientists at Yale University have linked fetal exposure to wireless radiation with abnormal brain development in lab animals, and a recent \$30 million-dollar study by the National Toxicology Program of the National Institutes of Health found "clear evidence" of increased cancer risk as well as DNA breaks associated with exposure to cell phone radiation. The evidence linking parotid gland tumors and certain types of brain cancer with the use of cell phones is strong and growing. Studies have consistently shown that young children are uniquely vulnerable to the impacts of wireless radiation, as are people with implanted medical devices and those with compromised immune systems. Because the radiation seems to impact our bodies at the cellular level, it can manifest itself differently in different people. We need a moratorium on new wireless 4 and 5G systems at Lake Tahoe. They are a threat to all of us. Won't you please begin to protect those of us here with families?

Norm Nash said his family played a major role in developing many of the initial subdivisions at North Lake Tahoe, and in Washoe County. With the benefit of my years of experience with Tahoe, he can say with some certainty that the majority of visitors to Tahoe, and in particularly Tahoe homeowners and residents, are not there to enjoy gambling and nightlife in some isolated environment staring at a screen in artificial settings. They are there because they value a direct and palpable connection with nature and have a desire to step away from the hectic pace of modern life in the Bay Area, Sacramento or Reno. Our private development at Incline Lake, for example, thrived for 70 years as a place for homeowners and their guest to interact with the natural beauty of the lake and the magnificence of the Sierras within a comfortable drive from Reno. It was preserved as a natural and unadulterated ecosystem within the larger Tahoe Basin. He's sure that a cell tower in the immediate area of those homes would be met with fierce resistance. Cellular facilities are not only well-documented to be hazardous to the environment, but they would instantly result in a dramatic drop in the fair market values of surrounding homes. As it is relevant to your mission as Board members, however, we can safely say that the latest cellular bells and whistles are not only unnecessary to the Tahoe experience, they are an impediment to it. The goal of the recreation element of the Regional Plan is to manage recreation consistent with the guidance provided in the recreation threshold policy statements to "ensure equilibrium between the region's natural endowment and its manmade environment" (Public Law 96-551/TRPA Compact). 5G and 4G are indisputably hostile to Tahoe's "natural endowment". They are also hostile to the manmade environment in terms of property values and public health. There is no equilibrium that can exist if TRPA persists in approving every cell tower that the telecom industry seeks to profit from. If TRPA will not stand up for the natural environment and its residents it is quite simply failing in its mission as defined in the Compact.

Diane Heirshberg said the purpose of this public comment is to repeat the request she made in her March 25 email, requesting that the Board take immediate action to request that the Governors of Nevada and of California issue orders stating that short term vacation rentals, are closed in all Lake Tahoe communities, or at least in Incline Village, that visitors who come to the communities are required to be turned away and that the only exception is if a short term rental is needed to house persons who has a specific purpose that is related to government or medical responses to the COVID-19 virus crisis, at this time. Washoe County has advised that it can do nothing to stop short term rentals in Incline Village during this emergency period, because Governor Sisolak has defined short term rentals as an essential business that can remain open, and that includes Incline Village. As a full time, resident of Incline Village, she asked that TRPA protect our health by taking any steps you can legally take to temporarily, during the period of the COVID-19 crisis, close down short term rentals. It was TRPA which expanded the definition

GOVERNING BOARD

March 25, 2020

of a "residence" to include short term rentals in residential neighborhoods, and we ask that you protect the local residential neighborhood compatibility during this crisis. This request is consistent with actions of small vulnerable communities around the nation who are trying to save the lives of their permanent residents by limiting tourists escaping from nearby urban areas to the small outdoor communities; one of the actions has been shutting down vacation rentals. Some examples: Breckenridge in Summit County Colorado required no new reservations be taken at short term residents between March 15-April 6, 2020, and that all short term lodging units shall be vacated by March 18, 2020. The Florida Keys required all vacation rentals to close down by March 22, 2020, and no new reservations could be taken. Mammoth, California issued an Order limiting the use of short term rentals to specific purposes consistent with the Governor's stay at home order. Bald Head Island in North Carolina discontinued all short term rentals. Larger cities that are destinations, have taken similar actions, like New Orleans which terminated all full house short term rentals. The influx of tourists to Incline Village, and she presumes neighboring communities, since The California Governor's stay at home order, must be stopped.

Cash Lebish said he's speaking about an emerging topic of widespread public concern. The cell tower densification required for ever-increasing cellular broadband consumption is not sustainable; adhering to this trend will dramatically change the environmental health and visual character of this region which congress has rightly called a National Treasure. When a region serviced by a macro cell tower is at maximum capacity, the Telecom solution is simply to split the area with an additional tower. Demand is marketed to the public such as to encourage exponential growth, which in-turn requires a commensurate increase in construction of macro cell towers. This will ultimately require stands, then groves, and ultimately a forest of iron Monopines, requiring removal and artificial replacement our real forest; for an internet-of-things over cellular broadband. Fiber-optics to the home is an alternative means to reach the same ends. The dramatic and rare scenic beauty of the Lake Tahoe Region is the reason US Congress recognized Lake Tahoe as national treasure and exercised its unusual and exclusive right to create a bi-state compact in order to protect it. As the agency created and tasked with carrying out this heavy responsibility, you must order a moratorium until you fully understand the eventual visual impact of implementing this infrastructure with the density necessary to function.

Tomasz Drgas said there are currently some vocal special interest groups pressuring TRPA to streamline cell tower approval. They myopically claim that rapid cell tower deployments are necessary under the banner of "prosperity." They ignorantly and incorrectly profess to the public that there is no evidence that cell towers have any adverse effect on environmental quality. Despite being presented with thousands of pages of science, they dishonestly continue with the exact same narrative. US Congress created the Tahoe Regional Planning Agency in order to protect a threatened "National Treasure." The basin was being assaulted by short-term economic interests that ultimately endangered its long-term future—these included a hideous Emerald Bay bridge, beach high-rises, alpine wetlands development, and other development attempts that would strip away the very character that makes Tahoe a treasure. The current cell tower deployments are a new chapter in this very tired story. They threaten to strip away the scenic and wild character of the basin. Radiofrequency radiation kills-off pollinating insects, which in-turn lowers the yield of alpine berries and seeds, which then diminishes the renewable food supply, and hence the populations of birds and mammals. The low-intensity radiofrequency radiation also stresses migratory birds. Furthermore, hundreds of thousands of tourists are drawn to the Tahoe basin to see its unique wildlife populations, and urbanization would significantly diminish this appeal, causing economic harm. Cell towers also diminish real estate

GOVERNING BOARD

March 25, 2020

values. Because the continued installation of cell towers is a threat to the long-term prosperity of the basin, please implement a moratorium on cell towers until the long-term impacts are understood.

Gregg Lien, Law Office of Gregg R. Lien said he hopes the board had a chance to read his email from yesterday. We are living through one of the most troubling times that we have ever seen in our lifetimes. This simultaneously is a time of one of the greatest pandemic health challenges combined with one of the most foreboding economic crashes on record. We are reminded that we truly are just a part of one global economy and one global environment that does not respect national borders. It appears to be run mostly by one global, interconnected, interwoven, multinational dominion of dollars and greed that rarely acts in the best interests of humanity or the natural environment. It is, unfortunately, the new natural order of things. The internet of things and global wireless technology are a part of that new natural order of things. But one has to ask if Tahoe needs to be at the forefront of that order. Shouldn't Tahoe's lead environmental agency instead look to enhance and preserve the innate and unchanging frequencies and rhythms of nature herself? Isn't that TRPA's mission?

Fortunately, these two orders of things are not mutually exclusive. Green Bank, West Virginia is proof of concept. It is located right in the middle of the 13,000 square mile National Radio Quiet Zone, designated by the FCC to protect government radio telescopes which peer deeply into the cosmos for answers as to our origins in the Universe. Even low levels of radio signals can interfere with the work of the huge antennas, so virtually no radio frequency is allowed in the entire area. Far from making this area undesirable, people from all over the country have flocked to the area to enjoy the electromagnetically quiet environment at peace with nature. A growing number of people are aware that even at extremely low levels, EMF radiation is harmful. But, given the need to reduce power levels drastically or have no cellular service at all, AT&T designed a combined fiber-optic and dispersed low power system of transmitters that functions for the local residents and meets the extremely strict standards to allow the radio telescopes to function. Something like this can be done at Tahoe as well. All 5G systems must be connected to fiber-optic cable, and much of the Tahoe Basin already has completely quiet emission free fiber-optic cable infrastructure available. It is not as profitable for the telecom industry. They won't like it. But people will, and the natural environment will begin to recover from the shock and damage from the existing cellular systems. You will make greater progress in attaining your Thresholds given the overwhelming evidence of harm to the environment. (And, at a time like this, it is important to note that the latest science shows that EMF's can degrade the immune system, and injure cells, which in turn release virus into the organism.)

It will take firm and capable leadership to accomplish this. It has to start with the resolve to stop approving high-powered 4G and 5G systems until you can evaluate alternatives. You really can't make your required findings anyway given the latest studies on their effects. Please consider implementing an immediate moratorium on all new cellular facilities, not just towers. Convene a group of solution-oriented experts to begin to come up with a plan to provide service while working to achieve your Thresholds. This is far more serious a threat to the environment than many of the items your Board has agonized over, yet TRPA has done no study of the issue at all.

Amanda Reinhard said this is cry-out for help! "We the People," which include a daily growing of many in your community, have become educated on the harms of cell tower technology, and microwave frequency radiation. We demand a moratorium on current cell tower technology deployment based on the science that is already in place. Tahoe cannot take this risk. You are an

GOVERNING BOARD

March 25, 2020

agency that is ultimately responsible for the health and wellbeing of the Lake Tahoe basin and its communities. It's in your best interest to protect the people as well. The studies and the facts being reported are very real. If these cell projects continue deploying this destructive technology, our basin will be destroyed. She's sure you want to do a great job and protect the basin. Studies show our forest and fauna, lake ecosystem, animal population, pollinators, air quality, streams, and wetlands will suffer greatly and ultimately cause death from this. We currently are fighting and presently quarantined to evade the COVID-19. We are in a serious situation.

The cellular technology is going to give us a new face for fighting for our lives. She can't imagine with all the documented factual information from real science and the voices of the people, you would want to continue a project that would be detrimental to the Tahoe basin and the people. The "buck stops here" with your decision. Our fate is in your hands. Studies have shown our health will be affected. People around the world are actually dying from new cell tower technology, particularly in Switzerland, China and Italy. Where it is most effected by the Corona virus. 3,000 doctors from around the world have signed petitions to bring awareness that this is a deadly and dangerous technology. It is unacceptable to allow large cell "mono pines" towers in any of our neighborhoods. Her family moved to South Lake Tahoe 35 years ago to be free of a cosmopolitan fast-paced lifestyle; to live healthy, active, outdoor lifestyles and not be bathed in toxic EMF frequencies. In 2015, 215 scientists in 41 countries proved that Electromagnetic fields effect all living organisms. They have petitioned the U.N., refer to <https://www.emfscientist.org> This technology effects our DNA. All the relevant facts have been presented to your agency from herself, and professional experts, doctors, scientist and your public. Your community has people in it that actually care about the environment and the people.

V. APPROVAL OF AGENDA

Mr. Yeates deemed the agenda approved as posted.

VI. APPROVAL OF MINUTES

Board Comments & Questions

None.

Ms. Aldean moved approval of the February 26, 2020 minutes as presented.
Motion carried.

VII. TRPA CONSENT CALENDAR

1. APC Membership Appointment for the El Dorado County, Lay Member, Jason Drew
2. Legal Committee Membership Appointment (Mr. Yeates will move from the Operations and Governance Committee to the Legal Committee)

Board Comments & Questions

None.

Public Comments & Questions

GOVERNING BOARD

March 25, 2020

about burglaries impacting businesses that are closed.

XII. COMMITTEE REPORTS

A. Main Street Management Plan and other components of the US 50 South Shore Community Revitalization Project

Refer to the staff report.

B. Local Government & Housing Committee

Ms. Berkbigler said they have an agenda item to meet on in April.

C. Legal Committee

No report.

D. Operations & Governance Committee

Ms. Aldean said they didn't meet today to discuss items such as the work that continues on the long term debt refinancing strategy. A positive note is that interest rates will be competitive given the recent reduction in lending rates by the federal government.

Mr. Keillor said they are proceeding forward with the debt refinancing and expect to bring an action to the board in April to approve a draft proposal. The plan is to complete the refinancing in June.

E. Environmental Improvement, Transportation, & Public Outreach Committee

No report.

F. Forest Health and Wildfire Committee

No report.

G. Regional Plan Implementation Committee

Mr. Bruce said the committee discussed and recommend a new process to add to staff's work plan to create vehicle miles traveled threshold.

XIII. PUBLIC COMMENT

David Benedict said he's participating under protest. This is not a democratic process, but a violation of procedural due process of law. Under the current California Governor's order to self-quarantine, and shelter in place, everyone involved is not able to comment due to public library computer and wifi locations being closed, and lack of computer skills. On the matter of TRPA regulation of cell tower deployment in the Tahoe basin, the Supreme Court of the United States agrees with congress that TRPA is neither a state nor local governmental agency. This means it is exempt from the provisions of the 1996 Telecommunications Act prohibiting state and local agencies from independent regulation of RF emissions. The Board need to implement a

GOVERNING BOARD

March 25, 2020

moratorium on cell tower deployment now and study all its impacts.

Ben Lebovitz said we appreciate your commitment to supporting discussion and offering this webinar. The concern is for the impeding efforts to install cellular infrastructure that is injurious to the neighborhood. The evidence is overwhelming and the public outcry for support to the constituents residing in the basin is alarming. A petition demanding an immediate moratorium on all cellular facilities has reached over 1,300 signatures. The applications provided from the telecom industries have been riddled with errors, from distance to buildings, property land coverage errors and would exist upon previously marked sensitive TRPA land and waterway maps, errant presentations of visual impact and deceptively displaced natural and protected creeks to appease the presentation. It is unlawful that a consideration to produce cellular infrastructure with falsified information be considered and approved.

The city and TRPA have an important decision to thoroughly fact check against the evidence presented and can win. Pressuring big wireless to install fiberoptic infrastructure to support their mission will not only protect the lives and environmental executive orders but achieve a goal of support. The language around fear for communication during forest fires is a fake threat. The cellular towers above ground are a grave threat to the safety and health during a forest fire. They would be the first to erupt and would limit our potential communication during an emergency. Having updated fiberoptic infrastructure would provide greater safety for the community and preserve the natural and environmental concerns. Additionally, city owned fuse boxes and harsh penalties would allow the city to retain financial gains in the threat of big wireless greed. Thank you for your consideration and continued support to our community. Please enact an immediate moratorium on all cellular infrastructure and hear the people's cry.

While there are the many commonly discussed health issues from radio-frequency radiation, that this Board should take very seriously, he's particularly concerned this morning that the unique construction materials of these towers pose a significant danger to Lake Tahoe's water quality. Rainwater flushing down the many cell towers wash UV-degraded microplastics, particles of synthetic fiber, dyes, leached chemicals, detergents, and manufacturing residues from "stealth tower" artificial pine needles, intermixed with machine oils, and printed circuit-board treatments from the Antenna mounts. This will introduce both microplastics, and soapy, oily, toxic residues into the stormwater drainages and thus Lake Tahoe. Microplastics have been identified as an emerging threat to the lake, often entering it from urban runoff.

Many cell towers also require construction and installation of a diesel tank for an emergency generator. A leak of any sort above ground or into the water table from any of these facilities could cause catastrophic and irreversible damage to the lake, its scenic shoreline, and the intermediate wetlands and riparian areas that are habitat for aquatic life, waterfowl, and fragile alpine plants. It could also contaminate drinking water wells. A diesel spill would cause direct poisoning of wildlife and plants. A spill or leak could occur from a fueling accident, corrosion, or cracking of the tank through earthquakes, land subsidence, frost heaving, extreme thermal stress, or by blunt impact from the falling of any of the many surrounding pine trees during a violent winter

GOVERNING BOARD

March 25, 2020

storm.

It would also be advantageous to consider space for community maker space within the event structure. I would be happy to offer some research on how this could benefit the community and the popularized systems for member based access to create at a local level. Something so important to continue to produce craftsmanship and quality to last within a local footprint.

Against:

The one thing that would absolutely be disastrous and highly discourage a parking facility at the top of Ski Run. It is already madness and getting far out of hand. It would disrupt the community that lives here, increase traffic beyond. Visitors in the hundreds continue to sled at the top of ski run where it is not permitted and walk around the top at Saddle and Ski Run in a daze. Parents let their children run all over the street, into resident's property and a parking facility will cause even more mayhem. It is not a welcome location and during peak snow season an additional stress on accidents and traffic's inability to drive up the mountain. It is also the foothill of the forest land and a large paved facility would ruin the aesthetic quality of the area diminishing the home's value at a rapid pace. Consideration, Buy the old Chevy's restaurant that's been vacant for years and build a parking facility with a green rooftop like the salesforce park in San Francisco. Repurposing the land with natural vegetation, trees and a park that looks out over the lake.

Carole Black, Incline Village said she's providing comment regarding the current Coronavirus pandemic as it intersects with life at Tahoe. She applauds the many interventions implemented regarding Covid-19 to date. In addition, she offers recommendations based on identified issues and actions elsewhere. Every Covid-19 case will infect about 2.8 others who will each in turn infect more. Thus, every case avoided is a significant opportunity and every preventive action taken now is critically important!

What are current priority considerations regarding Covid-19 and the travel/tourist Impact here? The Tahoe area has increased risk re individuals driving/arriving from nearby high impact areas. California has a "shelter in place" order and we are just a short drive away! Yet there is apparently no identification or tracking process in place to screen or track sick folks or their contacts arriving here. We have heard of transient visitors coming from high risk areas, some apparently ill. Thus, with limited local testing so far, it seems likely that reports of "no/few cases at the lake" are unreliable.

Interventions to limit further spread are important: One, require warnings and restrictive notices on all government and tourist-serving websites. Pages extolling the joys of remaining activities encourage visits and should be removed for now; two, restrict hotels, etc. and all forms of "Transient Lodging" (for example, as listed in Washoe County Chapter 25 including short term rentals). To protect us and tourists in this high risk/low resource/limited health care capacity area, action is needed now. Three, short term rentals require urgent action: In addition to attracting visitors to our high risk, poorly resourced area short term rentals have no requirements for cleaning/sanitation and there are now few sanitizing supplies available for private purchase. "Self-policing" will almost certainly be insufficient - encourage emergency closure of short term rentals during this period of rampant viral spread. Four, health screenings at Tahoe area entry points: There are limited access points &, given our elevated risk profile, screening should be considered. Cars are checked for chains when indicated – why not for health risk/symptoms now? The bottom line: A public health catastrophe related to excess tourism won't benefit residents, tourists or tourism industry/area economy. Reasonable

GOVERNING BOARD

March 25, 2020

restrictions are appropriate. We look to TRPA to lead in facilitating Tahoe area response in this time of unprecedented risk.

Nikki Florio said as you know there is a great deal of controversy surrounding 5G human health and environmental impacts. She's writing this letter as a 20+ year environmental professional who has provided information on environmental and human health for decades; with a focus on 5G and related technologies currently. The information provided below is a collection of topics that will demonstrate irrefutably, the negative impacts of 4G/5G on the environment and how it exacerbates the already threatening, wildfire potential throughout the basin. This email will explain why you must exercise the precautionary principle and call for an immediate moratorium on the installation of these towers and lamp/light posts. In approving these towers, you will never meet TRPA's legal mission or environmental goals.

There are nearly a billion and a half insects on Earth and without them, humans will not survive. These are not simply "bugs", but orders of animals that are the foundational to ecosystem health. The bulk of them are pollinators, many also serve primary and secondary sources of food - for everything from other insects themselves, to bird, bat, small mammal, amphibian, reptile and other animals found in the Tahoe basin and throughout the world. While there are many threats surrounding their losses one of the greatest is cell tower emissions. Since the early 2000's through today around 250,000 2G and 4G towers have been installed, with current 5G millions more have been added. These towers all add to the microwave and millimeter wave (mmWave) frequencies that are overwhelming them. Regarding ecosystem impacts: fewer insects means fewer flowering plants in the region's meadows, grasslands, marshes, and forests. You will see via info below, how 4G/5G mmWave technology impacts these and other pollinators and why it needs to be halted immediately throughout the basin.

If we lose the millions of species of insects and animals that make up the great pollen nation within the next handful of years - and we will if 5G/ IoT is successful - the result will be a final implosion of our food and ecosystems. We will lose animals that have co-evolved with flowering plants for millions of years. Plants that we need for food, oxygen, soil stabilization, soil remediation, water and moisture, retention and release, and of course psychological health. "Health and safety" testing of 5G has been fast-tracked by the FCC - a five member entity composed of telecommunication executives. Unfortunately, they neither excised, nor utilized, any meaningful amount of environmental or biological research in regard to 5G. They utilize no independent physicians or scientists as consultants.

5G's spectrum mmWave technology is deadly to insects, birds, bats, amphibians and a host of other animals - including humans. Her job is to expose impacts leading to the extinction of the great pollen nation: the scope of winged and terrestrial insects, birds, bats, small mammals, primates, salamanders, and other animals that pollinate the bulk of Earth's flowering plants in both ecosystems and food systems. Pollinators are responsible for pollinating the nutrient dense foods that have allowed humans to evolve into the species we are today. Below are some of the impacts, the studies correlating these impacts are numerous.

Insects: Lake Tahoe: Ants, beetles, bees, butterflies, moths, mosquitoes, dragonflies etc.

GOVERNING BOARD

March 25, 2020

~ EMFs damage to insects' exoskeleton; primarily to the chitin, leaving them susceptible to bacteria ~ 5G frequencies impact both the antenna and bodies of insects essentially penetrate insects' bodies resulting in "cooking" them; "causing fever-like impacts that affects their behavior, physiology and morphology." ~ EMF Impacts on bee navigation.

Animals: ~ Damage ranges from cellular damage to neurologic impairment.

Soils: Lake Tahoe: meadows, marshes, forest. ~ Damage to soil microbes and cell walls of fungi/chitin ~ Towers Significantly effects microbial diversity and alters vital systems in microbes ~ Increases susceptibility of pathogens.

Plants and Trees: Lake Tahoe: grasses, wildflowers, domesticated flowers, shrubs, conifers, deciduous.

In a nutshell, 5G will wreak havoc on plants throughout the basin. Plants and trees absorb mmWaves. From the splitting of DNA/RNA in plants; resulting in toxicity, to gross increase in terpenes (100x) exacerbating forest stress and influencing explosive fires. High frequency towers will mean distressed trees surrounding the towers, and toxic plants - no more backyard gardens, pollen in conifers themselves will be toxic, flowering plants will be toxic for insects, butterflies, hummingbirds, and other pollinators. Damage to trees near towers - see email (see link in emails you received from 3.23.20: TRPA Requested Moratorium on 5G - Env Health and Wildfire Impacts) In essence, 5G will wipe out the bulk of insects, birds, bats, small mammals and other animals in the basin within an extraordinarily brief timeframe. As noted in an earlier meeting, when you go to areas that have 5G you hear only silence. Dr. Martin Pall Biomedical Professor of WSU recently stated that "5G is the stupidest idea in the history of the world." Utilize the precautionary principle. Keep the environment safe from this deadly technology.

Paul McGavin said he attest and affirm that the following statements are true, accurate within his own personal knowledge. These comments are relevant to all residents of the Tahoe Basin dealing with so-called "small" Wireless Telecommunications Facilities, misleadingly branded "Small Cells", which is a misnomer because the maximum Effective Radiated Power Output from "Small Cells" in residential neighborhoods that reaches bedrooms is much higher than from Macro Cell Towers that are 3,000 feet away. Small Cells are, therefore, Macro Towers. In short, they are not nearly small enough.

Consider "What is Allowed" vs. "What is needed" for Telecommunications Service for 1/2 miles radius of the sWTF.

1. Allowed: 50 feet or less in height vs. Needed: any height that does the job
 2. Allowed: Antenna container volume of 3 cubic feet or less vs. Needed: size of a Wi-Fi Router
 3. Allowed: Antenna cylinder 48" high x 15" in diameter vs. Needed: Antenna cylinder 4" high x 0.5" in diameter
 4. Allowed: Ancillary Equipment: 28 cubic feet or less vs. Needed: equipment 1 cubic foot or less
- You see the mismatch. You are allowing Macro Towers to be installed right outside of people's homes because you are not regulating all three key variables: Vertical, Horizontal, Power. If you haven't regulated all three, then you have achieved nothing. Why is that? The RF Engineer in Sonoma, CA already admitted the following in the Public record on Sept 12, 2019.

GOVERNING BOARD

March 25, 2020

Lee Afflerbach from CTC Technology and Energy: "each small cell is capable of almost putting out the same energy as one macro cell. The radios that they are using are the exact same radios that are up on the macro towers. It's not a different technology, it's the same boxes as on macro towers. He sees them all the time."

The following comments are relevant to turning off all Small Cells in the Tahoe Basin during the coming COVID-19 community spread. Re: the relevant correspondence with the City of San Francisco at these links: [scientists4wiredtech.com/sebastopol/#death](https://www.scientists4wiredtech.com/sebastopol/#death) and [scientists4wiredtech.com/covid19/#fail](https://www.scientists4wiredtech.com/covid19/#fail)

The TRPA can take immediate action to stop the melatonin suppression and immuno-suppression of the Tahoe basin population caused by unnecessary, insufficiently regulated, forced exposures to hazardous, pulsed, data-modulated, Radio-frequency Electromagnetic Microwave Radiation (RF-EMR) for strictly frivolous entertainment purposes. These sWTFs are unnecessary, ancillary and frivolous sources of entertainment; they are not needed for making emergency calls — we could already do that in Tahoe basin — without any of these sWTFs.

See an excerpt of comments on March 4, 2020 From Attorney, Gary Widman

To: San Francisco Board of Appeals

I speak to you tonight as a friend of Ms. Cheryl Hogan, not as her retained attorney. However, to acquaint you with my background — I served as General Counsel of the Council on Environmental Quality in the White House under Presidents Nixon and Ford. I also served as Associate Solicitor of the Department of the Interior appointed by President Carter, and as the Director of the Office of Staff Attorneys at the US Court of Appeals, Ninth Circuit. Among other tasks, I also taught Environment Law in all the "local" UC Law Schools; Hastings in San Francisco, U.C. Berkeley and Davis. Last fall you rejected Ms. Hogan's appeal asking rejection of a "small wireless facility" that was later installed just 12 feet from her window at 3535 Sacramento St. She provided you with a binder of peer-reviewed scientific evidence that was compiled by SF-DPH Director Dr. Aragon's "other boss" Dr. Joel Moskowitz at UC Berkeley. Shortly after installation of the WTF on or about Nov. 20, 2019, Ms. Hogan became ill and was diagnosed with a fast-growing brain mass. Ms. Hogan underwent surgery on Monday, March 2. As I write this on March 3, she is still in the Intensive Care Unit of the CPMC Van Ness hospital. We have our fingers crossed. We request that you shut down all of the sWTFs entirely, as you now know that it is almost certain to promote growth of her brain cancer and immuno-suppress the population unnecessarily during COVID-19 Community spread. The black binder that Ms. Hogan provided included peer-reviewed science establishing that RF Electromagnetic Microwave Radiation at levels hundreds of thousands of times lower than the 1996 FCC exposure guidelines causes a multitude of adverse health effects, including melatonin-suppression, immune-suppression, and neurological damage, as well as speeding the growth of cancerous tumors.

Verizon often uses antennas like the following:

For both antennas, the input power is (2 connectors × 500 W) + (4 connectors × 300 W)
= 2,200 Watts, but the antenna gains are different between the 48 in. and 24 in.
antennas.

Note: From Kevin Hietpas, Amphenol Product Support (815-381-7817), a 3 dBi antenna gain difference means double the power output and twice the transmission distance.

Verizon's Amphenol CUUT360X12: Antenna gain (48" tall) = TOTAL Max Effective Radiated Power = 22,260 Watts ERP

Verizon's Amphenol CUUT360X06 Antenna gain (24" tall) = TOTAL Max Effective

GOVERNING BOARD

March 25, 2020

Radiated Power = 17,230 Watts ERP

This is wholly inappropriate for WTFs installed next to homes.

We have hard evidence of human harms and death from RF-EMR exposures from similar towers in Sebastopol, CA and San Francisco, CA, detailed at the links, above.

Carson Abbey is voicing deep upset that staff at this Agency approved a macro cell tower within the TRPA documented "Truckee Marsh Bald Eagle Winter Nesting Habitat" (Tower address: 2435 Venice Drive, South Lake Tahoe; TRPA permit number is 20021381). This is obscene. It is well known that microwave electromagnetic radiation is very disorientating to all migratory birds. Our national bird is recovering from the brink of complete extinction, because of DDT, and now this agency is allowing them to be blasted with radiofrequency radiation that science shows is harmful to them! This is a violation of Federal Law (16 U.S.C. § 668 et. seq.). Lake Tahoe is located within a very fragile alpine ecosystem and along a salient migratory bird path. TRPA needs to implement a moratorium to understand it is broadly violating other federal laws such as the Migratory Bird Act (16 U.S.C. § 700 et. seq.).

Aldo Lepord said cellular broadband is one of the most energy inefficient means of information transmission imaginable. Energy is radiated in a wide range of directions such as to send an adequate signal to just a single point. The energy effectively lost through the air is tremendous. Furthermore, these towers and phones constantly "ping" the each other with idle chatter just to be able to connect a call.

The greenhouse gas emissions associated with continuously running a macro cell tower transmitter with 47,090 watts of effective radiative power (or 187.2 kilowatt-hours per day)—is a sizeable fraction per day of the power a household will use in an entire month! The agency policy is to reduce net power consumption, and there needs to be analysis on the impact against the agencies energy consumption goal and policy.

The new 5G frequencies increase the data capacity because the signals travel a much shorter range and thus limit inter-tower interference. However, the very reason this frequency band's range is limited is because the energy is lost heating up the air! We just phased out incandescent lightbulbs because of thermal and electrical waste, and now we are asked to adopt kilowatt microwave transmitters! This is all being done to make some greedy corporate giants milking a bad technology even wealthier, at the complete loss of the environment. 5G transmitters create thermal islands around each site, which also have an obvious potential for environmental harm.

When you compare cellular to fiber optics, the waste is dramatic: a milliwatt laser diode can continuously send broadband signals tens of miles through a single fiber optic strand, whereas it would take a 50,000 watt transmitter to send this same signal to the same point through the air. The disadvantage of fiber optic terminals being spatially fixed is not an issue for home broadband, because houses do not get up and move around. Setting-up a cellular infrastructure to provide home broadband is horrible public policy. The obvious answer is fiber-to-the-home; and compact home Wi-Fi networks are always an option for those who must have Wi-Fi calling available to their "smart" phone. Such extremely wasteful uses of energy are responsible for global warming. This is resulting in one of the larger mass-extinction events in geologic history.

GOVERNING BOARD

March 25, 2020

In this context, the policy choice is easy. Do not permit this waste! TRPA needs a moratorium on Cell Towers while it assesses the impacts.

Bill Marshall said concerns raised by local special interest groups that we “will all die” in a freak inferno unless there is a rapid deployment in cell towers are unfounded conjecture and baseless speculation. There is no hard evidence whatsoever supporting the certain likelihood of a historically extremely rare scenario; or such event resulting in a mass-casualty. The canyon gorge topography, vegetation, and associated "Venturi Effect" fire weather in Paradise, CA is actually quite different than that surrounding our alpine lakeside cities. Many people died in the "Camp Fire" because the roadways did not have the capacity to evacuate trapped people. Cellphones have actually created stampedes in a wide variety of emergencies.

Groups exploiting this tragedy, such as the T.P.C., ought to be ashamed! He has firsthand knowledge that close relatives of victims of this tragedy are generally angry how their loss has been used statewide to sell all sorts of things, including political decisions that the victims certainly would not have supported if they were alive.

Cell towers are neither the only way or the best way to provide network connectivity to residents. Cell towers transfer real costs to the environment. Science proves that cell towers damage trees at the cellular level, triggering stress responses. Conifers secrete extremely flammable terpenes--possibly to ward off typical beetle infestations--in response from stress caused at the cellular level--in this case because of RF radiation. This actually raises fire danger.

Furthermore, the pulsed microwave radiation used by 4G/5G cell towers is known to cause extremely adverse neuropsychiatric effects including depression and several well documented suicides. It is just as likely or perhaps unfounded--as a mass-casualty conflagration--that these towers could be the proximate cause of a mass-shooting: known RF-induced depression--such as in that in future teenager--could cause him or her to act out in violence at school or a public event. We need a moratorium on cell towers and decisions based on current science, not speculation off freak disasters.

Johathun Mirror address you with heavy concerns about the rapid cell tower deployment in the Tahoe Basin. There is a vast and rapidly growing body of hard science proving that the radiation used by this technology is an emerging threat to the Tahoe Basin. The most prestigious scientific journal NATURE published several articles on the effects of radiofrequency (RF) radiation on migratory birds, butterflies, bees, other insects, and mice, which make it unequivocal that RF radiation has the potential to harm, harass, or stress wildlife populations. NATURE also recently published a new study confirming RF radiation causes oxidative stress leading to DNA damage. Hundreds of scientific publications demonstrate the potential for serious adverse environmental effects to the protected Lake Tahoe ecosystem. This very fragile alpine ecosystem is along a salient migratory bird path; there is far more at stake than just the human populace. Even where cell tower antennas have ground fencing sufficient to protect humans from RF exposure above the Federal Communication Commission (FCC) limits, migratory birds—inclusive of northern goshawks, peregrine falcons, osprey, bald and golden eagles—regularly perch in the stands of trees where these antenna towers would be installed. This federally protected wildlife is certainly being exposed to radiation above the FCC’s limits designed for human exposure. Peregrine Falcons and Northern Goshawks are federally protected migratory birds, that are further protected within TRPA’s designated disturbance free zones.

GOVERNING BOARD

March 25, 2020

Because Lake Tahoe is such an incredibly special and environmentally sensitive place, Congress created the TRPA in an unusual manner so as to allow it to create extraordinary environmental regulations—it even permits it to regulate radiofrequency emissions at levels below those chosen by the FCC, if necessary, to protect the basin. The science is now here that this basin does indeed need such protection.

Mono-pine antenna towers are particularly harmful as they mimic predatory bird habitat, and hence invite eagles and hawks to perch within the intense near-field radiation of 50,000-watt ERP antenna panels to their own peril. For this reason alone, the board needs to act. TRPA staff left to their own discretion have already approved a Macro Cell Antenna within the Truckee Marsh Bald Eagle Winter Nesting Site despite our national bird being expressly protected from harm by federal law! Please implement a moratorium!

Jennifer Quashnick said she appreciated TRPA's efforts to 'go virtual'. However, a request is to please allow extra time for the public to provide written comments. For those who want to comment on something that was just said, it takes time to fill out the form and send it in to be read, while also trying to continue to listen to other public comments.

Tracy Reinhard said please make sure the cell tower project is safe before implementing it. As a resident of beautiful Tahoe, I'm not sure about this technology being the most helpful right now in combating the Covid-19 19 pandemic, due to the super frequencies and because she's no scientist she always makes sure the microwave door is closed before nuking food. She knows the environment means a lot to you as we fight as a team for the Tahoe basin. Putting on hold this tower project could make sense as we have a new pandemic to deal with in addition to the unknowns of this super tech towers. our collective and individual immune systems are most vulnerable due to the pandemic, before the pandemic we were worried and now we feel the towers will not help the situation but only accelerate the demise of health of living things in the Tahoe basin.

Susan LaPorta said we need a temporary moratorium now to stop and reflect on what you are unintentionally allowing to happen. Profits for the telecom industry profit at the expense of the environment. Solid science that shows a serious threat to the environment from this complete failure to address the issue. TRPA's mission is to preserve your ability to protect the environment from his threat. It may already be too late in some areas, but you can at least prevent further degradation if you act now to impose a moratorium on any new wireless facilities.

Monica Eisenstecken said she's extremely concerned about the rapid increase in the number of cellular facilities at Lake Tahoe. These are dangerous to Tahoe's sensitive environment. Trees, wildlife, birds, insects, plants and more are all negatively impacted. TRPA's Board has never even required study of this issue. TRPA's mission is to protect the environment. While this threat to the environment did not exist when your first Regional Plan was adopted, it is now a severe threat which will only get dramatically worse with the rapid roll out of new 5G infrastructure. We need a moratorium on new cellular facilities now so that TRPA can create appropriate standards for the protection of Tahoe's sensitive environment. There is ample evidence that increased levels of EMF's are a hazard. Please, take action on this immediately before more damage is done!

GOVERNING BOARD

March 25, 2020

Peggy Bourland said as the telecom industry accelerates their deployment of cell towers in the Tahoe Basin it occurs to her and others that the TRPA has no master plan in place to protect Tahoe's scenic and environmental integrity. In her neighborhood of Al Tahoe on the south shore there have been several unsightly small cell (5G) installations in the public right of way. This is happening in most south shore residential neighborhoods. The recent city approval of a 112 foot mono tower in a view corridor residential neighborhood on Ski Run Blvd. is a further assault to the scenic corridor. Other existing large cell towers like the one in the Tahoe Keys are unsightly and cause questions like, "how did that get approved". Your attention to this matter is needed before this situation gets completely out of control and possibly irreversible. The request is for the TRPA to put in place a temporary moratorium until environmental concerns can be addressed.

Steven Veit-Carey said when people, including me, walk around the block in my neighborhood they pause at the top of Ski Run Boulevard to look at the lake, the mountains, the sunset and the quintessential views of the Tahoe Basin. He's also noticed that many tourists drive up to this area because they instinctively sense that they will be able to get an awesome view of Tahoe. If a 112 foot tower is built on Ski Run Boulevard, just below this favorite spot of locals and tourists alike, it will be a sad day for him. Instead of being amazed by the crystal blue waters of Lake Tahoe, he wonders how anyone allowed a giant fake tree to dominate the skyline of one of the most treasured view sheds in South Lake Tahoe. The cell companies did not ask for my consent for this unwanted and dangerous technology. In regard to the dangers of this "weapons grade" 5G technology: He'd like to direct your attention to FCC bulletin No. 65, section 4, entitled Controlling Exposure to RF Fields. This is the current standard that all cell companies are familiar with and has been around for 20 years. The FCC could not foresee microcell towers in neighborhoods and thought cell antenna would only be on top of tall buildings and on remote ridge tops. Their concern was for people in office buildings and high rise hotels that would be close to these RF emitting antenna. They never thought the general public would ever be close enough to be exposed. The bulletin states that compliance requires that people who will be near broadcast antennas should not get any closer than 15 meters (or just under 50 feet). The bulletin goes on to say that when accessibility to cell antennas is restricted within the 50 foot perimeter the facility can then certify that it complies with FCC requirements.

In addition, bold print states that the FCC is worried about exposure limits not emission limits. This brings in a time factor. The longer you are in an RF field the more exposure you have (sort of like a sun burn). This comes in to play when maintenance workers need to work inside the 50 ft. restricted area. The FCC guidelines state, "The work may have to be divided up and carried out during several intervals of time." The occupational exposure time recommended by FCC guidelines is six minutes. The FCC is serious about this as they imposed fines of \$85,000 on two cell phone companies that co-located on top of an apartment building for not securing a 50 foot perimeter.

Josh Moore said he's very concerned about the coming 5G systems that are already appearing around the Lake. He doesn't want them, and don't know anyone here who wants a 5G transmitter anywhere near them. His understanding is, however, that they need to be close to all of our residences because of their limited range. He was shocked to hear that you haven't even looked at the dangers of these things. Please don't force these down our throats without looking carefully at all the evidence of their harm on the environment and our local population!

GOVERNING BOARD

March 25, 2020

Eric Windheim said he's a Certified Building Biology Environmental Consultant & Certified Electromagnetic Radiation Specialist. In 1959 his family boated from Camp Richardson to Meeks Bay: He was awed by the natural beauty of the pristine lake and basin then and now 61 years later. Sadly, it looks like big city wireless radiation toxicity is proliferating without true environmental review or constraints in the Tahoe basin. Cell towers are sprouting up in residential and wildlife areas.

Since the TRPA Regional Plan of 1987, the Update of 2012 and the 2015 Threshold evaluations did not discuss or evaluate the wholistic impact of WRTF facilities on the environment and its inhabitants I urge you to create a temporary moratorium, right now, until you do so. This will mean a ban on consideration, construction or upgrade of any and all WRTFs immediately. Other commenters will supply the studies and papers that clearly document the harm, injury and damage that Radio Frequency Radiation (RFR) has on all living things, worldwide and in the Tahoe Basin. He will include a few pdf documents that have multiple links to how the RFR that comes from WRTF damages wildlife: each one of these pdfs is a compendium of research paper links. Will you please examine them to see how WRTRs harm the environment and living things in it? More and more the American People are waking up to the hazards of WRTFs and the false safety purported by the FCC and industry organizations. Unwitting reliance upon so-called thermal only safety guidelines adopted or created by the agencies and organizations that are captured by or serve the wireless industry is not wise or defensible.

A captured agency like the FCC can't be relied upon to protect the Tahoe basin. Please see this link for documentation on how the FCC is captured:

https://ethics.harvard.edu/files/center-for-ethics/files/capturedagency_alster.pdf

Above all, people do not want these WRTF anywhere near their homes or schools. In his profession as a Building Biologist and Electromagnetic Radiation Specialist they are based in science and use nature as a model. The goal for clients is to detect, measure, assign a risk level, suggest & effectuate solutions that reduce the EMF exposure in the house. When he does that both clients and their pets feel better: this is one reason he gets about half of all his clients from medical doctors and pediatricians in particular. He sees the tremendous pain, suffering injury and damage.

XIV. ADJOURNMENT

Chair Mr. Yeates adjourned the meeting at 1:31 p.m.

Respectfully Submitted,



Marja Ambler
Clerk to the Board

The above meeting was taped in its entirety. Anyone wishing to listen to the tapes of the above mentioned meeting may call for an appointment at (775) 588-4547. In addition, written documents submitted at the meeting are available for review

GOVERNING BOARD

April 22, 2020

No report.

F. Forest Health and Wildfire Committee

Mr. Hicks said there may be a committee meeting in May to review possible code amendments to Section 61.3, vegetation protection and management.

G. Regional Plan Implementation Committee

Mr. Yeates said the committee met and discussed VMT and the air quality mitigation fee as part of the workplan.

XII. PUBLIC INTEREST COMMENTS

Elizabeth Noah said she's a year-round resident of North Lake Tahoe. She would like TRPA to address the closure to boats until further notice. Did you receive a mandate from Nevada or California governing bodies to make this decision? Did you make this decision internally, within TRPA? What studies or science are you relying upon to substantiate your decision to prohibit boating? Do you believe that if your decision to prohibit boating is defensible if litigated?

Ellie Waller, Douglas County resident said some language from previous a staff report in this packet, only 2 pages. Staff, applicant, and stakeholders worked to ensure that the transit package is effective and works to change people's behavior and will get people them out of their cars. The group designed mandatory conditions of the permit that will deliver effective transit and traffic mitigation for the traffic effects of this project; new, free, and frequent on demand, and flexible transit services and parking management measures. What in the way of funding is being requested of Douglas County ? Staff should provide any future expected funding requirements to the Douglas County Commissioners (BOCC) for consideration at future meetings so the public can weigh-in and not assume funds will necessarily be granted. Grant dollars may cover some of the expenses for new or additional vehicles but what about the high potential for infrastructure upgrades due to public utility line relocations?

In Mr. Nielsen's presentation, Transportation impacts were the primary topic of conversation with this project. The environmental assessment identified impacts to transportation as potentially significant. The primary impact is operation of the event center will result in a significant increase in vehicle miles traveled.

Who will monitor and fund VMT counts to ensure no net increases occur? How often will traffic counts be completed? The Tahoe Douglas Visitor's Authority should foot that bill, it's their Event Center. How will the proposed year-round free transit be funded? There are only so many grant dollars to go around. If Douglas County is in the assumption pool of potential funders, then the Douglas County Board of Commissioners should discuss at an upcoming public hearing. One of the questions discussed amongst the stakeholders was what would happen if the monitoring showed that the performance measures were not being met. Stakeholders collaborated to develop an adaptive management plan.

How often will measurements be reviewed to ensure VMT exceedance issues are kept in check? Who will fund the monitoring? Should be the Tahoe Douglas Visitor's Authority footing that bill.

The purpose of the stakeholder coordination is to identify and to better understand the factors including those not specifically associated with event center operations that may be affecting traffic and how they need to respond to monitoring and determine the next steps. The stakeholder committee will include but is not limited to an event center representative, a state representative from each state, and representative from Douglas County, the City of South Lake Tahoe, TRPA, public safety, and the Tahoe Transportation District.

When will this stakeholder group be convened? The Douglas County Board of County Commissioners should be selecting the Douglas County representatives at an upcoming BOCC meeting, so the public is aware of who is representing them. They should also be allowed to weigh-in on representation. The entire County, not just the lake will possibly be asked to fund some of the Mainstreet Management Plan goodies, infrastructure updates, etc.

Henry Patrick said the TRPA should not be holding public hearings while the "freedom to assemble" is unconstitutionally suspended. Even martial law protects against undemocratic long term changes to governmental functions. There are a lot of individuals that rely on public sources of internet access (libraries, coffee shops, public areas), who cannot attend these webinars. Worse, because the libraries are closed (even law libraries), the public cannot consult the valuable references for constructive thought about agenda items. The lack of public assembly has real chilling effects on public debate. The economy is suspended by stay at home orders (large gathering venues are forecast to be prohibited reopening until a vaccine is developed, manufactured, and delivered to all 350 million US residents approximately in four years), and the country will certainly be dramatically transformed by the time it exits this crises, it is inappropriate to "railroad" a potentially obsolete vision under the darkness of the pandemic. These projects will not be able to generate revenue to pay for themselves for half a decade. This all should wait.

Frank Sinatra said he's a real and alive musician who has a home in the Basin. His parents, who are also musicians, gave me the first and middle names "Frank" and "Sinatra." He's honored to go by the alias "Frank Sinatra." Hence, he finds its particular offense in the pretext you are using to censor other peoples' public comment. Are we to believe that because John Marshall is irrefutably the diseased fourth Chief Justice of the United States Supreme Court, he cannot also be a real person? Cease and desist in finding creative pretexts to illegally censor public comment.

Tahoe Residents for Actual Prosperity said the simple high school physics assumption that radiation can only cause cancer by being of a high enough photon energy (UV/X-ray) to dislodge electrons and break chemical bonds is wrong. A preponderance of scientific evidence clearly indicates that radio frequency (RF) radiation causes reactive oxidative species (ROS) in living cells and free radical production. Microwave radiation alters the antioxidant repair mechanism resulting in a buildup of reactive oxidative stress. Free radical DNA damage results, as well as reproductive harm and some electro-hypersensitivity effects. Laboratory toxicology experiments show DNA damage directly resulting from microwave RF exposure, and epidemiology has found cancer rates near cell towers are upwards of three to four times higher than background rates; this aggregate rate approximates the vehicular fatality rate in the US! Despite long emerged science, the captured FCC continues to apply an outdated standard it imported from the "National Council on Radiation Protection" in 1996 before cell phones were widely adopted or any direct science existed to expose actual health effects. The FCC exposure standards are now 10,000 times higher than the 0.1 $\mu\text{W}/\text{cm}^2$ recommended by current science. Cell towers should not be located less than 1,500 feet (~500 m) from the public or sensitive wildlife. Telecommunications are a

trillion-dollar industry, and their corporate lobbying has been tremendous. The TRPA is not prohibited from regulating RF emissions limits as it is neither a state nor local agency (*Lake County Estates, Inc, v. Tahoe Reg. Planning Agency, 440 US 391, 401, (1972)*).

Concerned Citizens of the Tahoe Basin Regarding Cell Tower Moratorium said we need a moratorium on cell tower installations until the TRPA develops its own threshold findings specific to the sensitive Lake Tahoe alpine environment.

Arbitrary cell tower installations add uncertainty to real estate values, cost homeowner equity, unexpectedly ruin a family's nest egg, and generate large health expenses that we all pay for one way or another. A single cancer treatment regimen costs between \$100,000 and \$1 million and human life, itself, is invaluable. Even small risks which result in grave consequences must be taken very seriously. Because of the large numbers of residents exposed to this risk, the cost of doing nothing would result in an increasing number of people, many of them young, developing cancer and suffering other health effects; this extends to wildlife too. We have long proudly held a constitutional liberty in this country to personally make informed choices over the risks we exclusively take against our own health and bodily integrity. Regarding cancer, these ethos appear in California law through Proposition 65. Cell tower radiation is far worse than purchasing a cup of coffee, processed meat, BPA plastics, and MTBE gasoline. Such purchases are all informed choices. Unlike the latter, cell towers incessantly and non-consensually intrude radiation into our bodies with harmful cumulative exposure. Moreover, carcinogenic risk is not simply additive; there are synergistic effects because when cellular repair is consumed by one genotoxin, DNA is far less protected against additional mutagenic threats such as radon gas, UV light, or "recreational splurges." Callous infliction of bodily harm and disregard for home equity is un-American. We can do better.

Gaylord Nelson said the TRPA needs to implement a moratorium on wireless telecommunications facilities (WTF's) deployments, until it is able to assess the serious degree that such installations are undermining its own climate change policies.

Cellular broadband is one of the most energy inefficient means of information transmission imaginable. Energy is radiated in a wide range of directions such as to send an adequate signal to just a single point. The energy effectively lost through the air is tremendous. Furthermore, these towers and phones constantly "ping" the each other with idle chatter just to be able to connect a call.

The greenhouse gas emissions associated with continuously running a macro cell tower transmitter with 47,090 watts of effective radiative power (or 187.2 kilowatt-hours per day) is a sizeable fraction per day of the power a household will use in an entire month! The agency policy is to reduce net power consumption, and there needs to be analysis on the impact against the agencies energy consumption goal and policy.

The new 5G frequencies increase the data capacity because the signals travel a much shorter range and thus limit inter-tower interference. However, the very reason this frequency band's range is limited is because the energy is lost heating up the air! We just phased out incandescent lightbulbs because of thermal and electrical waste, and now we are asked to adopt kilowatt microwave transmitters! This is all being done to make some greedy corporate giants milking a bad technology even wealthier, at the complete loss of the environment. 5G transmitters create thermal islands around each site, which also have an obvious potential for environmental harm.

When you compare cellular to fiber optics, the waste is dramatic: a milliwatt laser diode can continuously send broadband signals tens of miles through a single fiber optic strand, whereas it would take a 50,000 watt transmitter to send this same signal to the same point through the air. The disadvantage of fiber optic terminals being spatially fixed is not an issue for home broadband, because houses do not get up and move around. Setting-up a cellular infrastructure to provide home broadband is horrible public policy. The obvious answer is fiber-to-the-home; and compact home Wi-Fi networks are always an option for those who must have Wi-Fi calling available to their "smart" phone.

Such extremely wasteful uses of energy are responsible for global warming. This is resulting in one of the larger mass-extinction events in geologic history. In this context, the policy choice is easy. Do not permit this waste! TRPA needs a moratorium on Cell Towers while it assesses the impacts.

Ira Einhorn said concerns raised by local special interest groups that we "will all die" in a freak inferno unless there is a rapid deployment in cell towers (Wireless Telecommunicating Facilities/WTF's) are unfounded conjecture and baseless speculation. There is no hard evidence whatsoever supporting the certain likelihood of a historically extremely rare scenario; or such event resulting in a mass-casualty. The canyon gorge topography, vegetation, and associated "Venturi Effect" fire weather in Paradise, CA is actually quite different than that surrounding our alpine lakeside cities. Many people died in the "Camp Fire" because the roadways did not have the capacity to evacuate trapped people. Cellphones have actually created stampedes in a wide variety of emergencies.

Groups exploiting this tragedy, such as the Tahoe Prosperity Center, ought to be ashamed! I have heard firsthand knowledge that close relatives of victims of this tragedy are generally angry how their loss has been used statewide to sell all sorts of things, including political decisions that the victims certainly would not have supported if they were alive.

Cell towers are neither the only way or the best way to provide network connectivity to residents. Cell towers transfer real costs to the environment. Science proves that cell towers damage trees at the cellular level, triggering stress responses. Conifers secrete extremely flammable terpenes, possibly to ward off typical beetle infestations in response from stress caused at the cellular level. In this case because of RF radiation. This actually raises fire danger.

Furthermore, the pulsed microwave radiation used by 4G/5G cell towers is known to cause extremely adverse neuropsychiatric effects including depression and several well documented suicides. It is just as likely or perhaps unfounded as a mass-casualty conflagration that these towers could be the proximate cause of a mass-shooting: known RF-induced depression such as in that in future teenager could cause him or her to act out in violence at school or a public event. We need a moratorium on cell towers and decisions based on current science, not speculation off freak disasters.

Tomasz said there are currently some vocal special interest groups pressuring TRPA to streamline cell tower approval. They myopically claim that rapid cell tower deployments are necessary under the banner of "prosperity." They ignorantly and incorrectly profess to the public that there is no evidence that cell towers have any adverse effect on environmental quality. Despite being presented with thousands of pages of science, they dishonestly continue with the exact same narrative.

GOVERNING BOARD

April 22, 2020

Congress created the Tahoe Regional Planning Agency in order to protect a threatened “National Treasure.” The basin was being assaulted by short-term economic interests that ultimately endangered its long-term future. These included a hideous Emerald Bay bridge, beach high-rises, alpine wetlands development, and other development attempts that would strip away the very character that makes Tahoe a treasure. The current cell tower deployments are a new chapter in this very tired story. They threaten to strip away the scenic and wild character of the basin. Radiofrequency radiation kills-off pollinating insects, which in turn lowers the yield of alpine berries and seeds, which then diminishes the renewable food supply, and hence the populations of birds and mammals. The low-intensity radiofrequency radiation also stresses migratory birds. Furthermore, hundreds of thousands of tourists are drawn to the Tahoe basin to see its unique wildlife populations, and urbanization would significantly diminish this appeal, causing economic harm. Cell towers also diminish real estate values. Because the continued installation of cell towers is a threat to the long-term prosperity of the basin, I plead that you implement a moratorium on cell towers until the long-term impacts are understood.

Monica Eisenstecken said she’s extremely concerned about the rapid increase in the number of cellular facilities at Lake Tahoe. These are dangerous to Tahoe’s sensitive environment. Trees, wildlife, birds, insects, plants, and more are all negatively impacted. Your Board has never even required study of this issue. TRPA’s mission is to protect the environment. While this threat to the environment did not exist when your first Regional Plan was adopted, it is now a severe threat which will only get dramatically worse with the rapid roll out of new 5G infrastructure. We need a moratorium on new cellular facilities now so that TRPA can create appropriate standards for the protection of Tahoe’s sensitive environment. There is ample evidence that increased levels of EMF’s are a hazard. Please, take action on this immediately before more damage is done!

XIII. ADJOURNMENT

Chair Mr. Yeates adjourned the meeting at 3:19 p.m.

Respectfully Submitted,



Marja Ambler
Clerk to the Board

The above meeting was taped in its entirety. Anyone wishing to listen to the tapes of the above mentioned meeting may call for an appointment at (775) 588-4547. In addition, written documents submitted at the meeting are available for review

Mr. Cashman said they're continuing to work on the Regional Transportation Plan Update.

F. Forest Health and Wildfire Committee

Mr. Hicks said the committee met today and are working through the Code of Ordinances on some forest health code amendments and bringing consistency into the language. They'll be bringing proposed amendments to Section 61.3 to the board in the next month or two. Some of their discussion today was on standardizing the diameter of old growth trees for purposes of measuring them for removal and other reasons. They're also looking at improvements that can be done in the stream environment zones.

G. Regional Plan Implementation Committee

Mr. Yeates said a proposed amendment for the Bijou/Al Tahoe Boys and Girls Club will be heard in June, the Placer County Tahoe Basin Area Plan and the Washoe County Tahoe Area Plan Amendment in July, and the City of South Lake Tahoe's Tourist Core Area Plan Beach Retreat Amendment in August.

XIII. PUBLIC INTEREST COMMENTS

Lynne Paulson expressed concern about TRPA potentially rushing through the public process for the upcoming project entitled: Tahoe Keys Lagoons Aquatic Weed Control Method Test. The Notice of Preparation for this project indicates there will be an attempt to seek exemption from the Lahontan Regional Water Quality Control Board which prohibits the use of aquatic herbicides in the Keys. This exemption would be sought before other non-chemical methods of weed control have been thoroughly examined and tested. With the global pandemic, extra care must be taken to engage the public whom you represent, not only from California and Nevada, but also a broader population since Lake Tahoe is of national significance. If this meeting is any example, my concerns are heightened by the separation I feel from direct contact with you. For at least half a century, technology has existed to use operators to allow the public to directly speak at public conference calls. Why are you using new technology to add a separate layer of distance between the Board and the public? It is most disappointing to not be able to face you in person, but I understand that current restriction. What I do not understand is your elimination of direct public speech during this meeting. This is a grievous error. Your meeting information said there will be safe and effective options for public input available at public meetings. I do not consider it effective for anyone else to read my comments. Your process of public engagement must be robust and inclusive, and this is not. You should take extra measures to accommodate public input during these difficult times. That should include the ability for the public to speak directly to the Board and also include extending the time for review of projects. This would allow full discussion and public input on important matters such as the proposed plan to use potentially harmful aquatic herbicides in the Tahoe Keys. Please add an agenda item to your next Board meeting to address these issues surrounding public input during the Covid-19 restrictions.

Dr. Adams made a comment through this form at last month's meeting which was ignored and omitted from the recently published minutes. You would not have been able to pull this stunt had I been able to directly speak behind the podium in person. Please retroactively add my reasonable comment to last month's record and include this follow-up in this meeting's record. My comment

was as follows: I am expressing grave concern about the development along the Pioneer Trail TRPA scenic corridor. This will make it exceedingly difficult improve the visual character of this corridor or for it to make its required threshold findings. This scenic corridor should be converted into a scenic parkway. The tree removal will certainly adversely affect this scenic drive. This parcel should be preserved as a park. There are other innovative ways to accomplish affordable housing objectives other than to develop here. You need to perform an environmental "alternatives analysis" that includes rent control, former vacation home rental unit acquisition and conversion to dorm/frat/family style affordable housing, and combinations thereof. Greedy titans of our local tourist industry would like you to build cheap housing for their employees rather than them pay these employees higher salaries under the resulting labor market force shortage. Moreover, most of the culpable managers and players (Tahoe Prosperity Center board included) own multiple homes themselves in the basin and hence directly contribute to the very homeowner shortage issue, and resultant real estate price hikes, they are tasked with "solving" by more development. This is wrong and unethical.

Laurel Ames, Tahoe Area Sierra Club said the Coronavirus has certainly disrupted a great deal of our lives, and the TRPA has, as have many government agencies, adopted new technology in order to continue meetings, but without the public in attendance, due to the potential infections that result from a crowded audience. However, this requires a decision as to what is of importance to the Governing Board, and it appears that Public Participation is of least importance and has been scheduled at the end of the meeting, at an unannounced time. The Tahoe Area Sierra Club Group is very concerned with this treatment of the public as your board enters the upcoming, currently scheduled in June, presentation of the Tahoe Keys Herbicide Test. The Herbicide Test itself is fraught with substantial issues and only the barest information is currently available, in the form of an Notice of Preparation released in June/July of 2019. The single meeting of the Stakeholders that includes the third "circle" of stakeholders, released new information on the status of the lagoons in terms of nutrient production. It was a short meeting, about two hours, and that is the first and last meeting for third level stakeholders as to facts that have been distributed and discussed by the first and second "circles" of stakeholders. In other words, there has been very little public participation available since the Notice of Preparation was released in the summer of 2019. The TRPA's new version of Public Participation is of utmost concern as it both limits the public role to providing a written, and short, statement which is then read by a non-participant, lacking the passion and fervor of real live public presenters. In order to comply with the intent of Public Participation, in this case of significant interest to the United States public, the use of toxic herbicides in the Tahoe Keys and potential impact on Lake Tahoe, they request that the Test project schedule be extended to the time that the virus no longer limits Public Participation in such a severe manner, and the process is both honored and respected by the Governing Board.

Mr. Rowell said I am from New England and have been a lover of Lake Tahoe my entire life; our national treasure, that is ostensibly protected by your congressionally created bi-state compact. I am outraged how the TRPA is abusing the pandemic: creating closed meetings to aggrandize power, with the payoff being the censoring and expunging unfavorable public comments from the record. I experienced such an occurrence last week. It appears that when John Marshall finds a comment that is damaging to the passage or legal standing of a meeting agenda item, he finds a pretext to censor and remove the comment from the record. The first iteration of this was to move these comments to the end of the meeting, and then never read or enter them purporting "lack of time." In the next iteration of this, he absurdly and arbitrarily performed internet name searches of the commenter, looking for a name collision with a deceased person, and then used

the results as "proof" that the person must be "crossing-over" from the dead. These are the tactics of despotic banana republics, not federally created agencies. Let there be no doubt what is occurring; the probability of ""name sharing"" is extremely high, if not certain (Cf. The "Birthday Paradox"). In fact, most individuals on the TRPA share the name of a person of searchable current or historical significance; it is a trivial game to play, even with narrow attribute specificity, say photography (Jeff Cowen is a very famous American photographer). When you include the names of all the people who have ever lived on earth in the last four-thousand years, there is a near-guaranteed historical name collision with a deceased person for nearly every conceivable name a living person might currently have. I was unlawfully censored by this machination last week, and I demand that my submitted (Google Docs) comments be added to the record for the "Tourist Core Area Plan, Pioneer/Ski Run Plan Area Statement 092 and Lakeview Heights Area Plan Statement 085 Boundary Line Amendments." I go by the name is Galen Rowell; I am alive and well and am not a deceased photographer. April 22, 2020 public comment made on Agenda Item No. VIII.B: "I am expressing grave concern about the development along the Pioneer Trail TRPA scenic corridor. This will make it exceedingly difficult improve the visual character of this corridor or for TRPA to make its required threshold findings. This scenic corridor should be converted into a scenic parkway. The tree removal and high density housing will certainly adversely affect this scenic drive. This parcel should be preserved as a park."

Tobi Tyler, Tahoe Area Group and the Toiyabe Chapter of the Sierra Club, I'd like to express our dismay and concern about your decision to proceed as scheduled with the controversial Tahoe Keys Weeds Draft Environmental Impact Report/Environmental Impact Statement during this pandemic despite the extremely diminished public review process. If this meeting is any example, this process is completely inadequate to meet the intent and requirements of National Environmental Policy Act and the California Environmental Quality Act. In a letter dated April 28, 2020, we urged TRPA and Lahontan Water Board to delay the Tahoe Keys Weeds EIR/EIS until a process can be developed that ensures that the meetings and workshops during the comment period can be conducted as the law intends. The hallmark of any public environmental review process is the ability of the public, residents and experts alike to examine, gather, discuss and comment thoughtfully on the complex scientific issues presented in the impact documents. Curbing the growth and spread of invasive weeds in the Tahoe Keys is an important project. But at the moment, it is not so essential and urgent that the environmental review process must continue at the current rapid pace pursued by the Water Board and TRPA staff during this existing public health crisis. It just isn't realistic to hold adequate meetings on the draft materials between June and August. Attendance assuredly will be required to be limited and telepresence options will further reduce participation. Furthermore, experts, scientists, attorneys and academics for example, with very detailed and specific comments are enduring the same challenges the rest of the world is dealing with in terms of employment interruption, family demands and health concerns. To open and close a public comment period when the public is preoccupied with issues of life and death would unfairly limit the participation of many people who have engaged on this issue for many years. We urge you to direct staff to slow this process down.

Kermit Beahan said all of your considerations of wireless telecommunication facilities (WTF's) need environmental assessments, reviews and/or impact statements evaluating their consequences on the endangered Sierra Nevada Yellow-Legged Frog: it is known to science that tadpoles placed in tanks at a distance of 140 meters from four cell tower base stations for two months will develop low coordination of movements, an asynchronous growth, in both big and small tadpoles, and a high mortality of 90 percent. Exposed frog tadpoles (*Rana temporaria*)

developed under electromagnetic field (50 Hz, 260 A/m) show an increase in mortality. Exposed tadpoles developed more slowly and less synchronously than control tadpoles and remained at the early stages for longer. Tadpoles developed allergies and EMF caused changes in their blood counts (Grefner et al., 1998). Electromagnetic pollution (in the microwave and radiofrequency range) along with other environmental factors is a possible cause for decline and deformations of some wild amphibian populations exposed. Tadpoles that live near such facilities, exposed to relatively low levels of environmental electromagnetic fields (1.8–3.5V/m) may suffer adverse effects (low coordination of movements, asynchronous growth, and high mortality), and this may be a cause (together with other environmental factors) of decline of amphibian populations (See attached “Mobile Phone Mast Effects on Common Frog (*Rana temporaria*) Tadpoles: The City Turned into a Laboratory” at page 34.

Clearly, cell tower installation near frog habitat may affect frog mortality. As an endangered frog clearly may be affected (50 CFR § 17.11(h); 50 CFR § 17.95(d); 79 FR 24255.), a moratorium must be implemented until the harms to this species is understood and an environmental assessment and/or impact statements is made. Whereas the cited study “concludes that RF emissions ‘may’ cause an increase in development and mortality,” an activity that “may” cause significant environmental effects is precisely what requires an EA (see 40 C.F.R. § 1508.27(b)(5); Cf. *Sierra Club v. Norton* (friends of the Earth, Inc.), 207 F.Supp.2d 1310, 1336 (S.D.Ala. 2002) (“Under NEPA, it cannot use the lack of existing information as a basis for acting without preparing an EIS.”))

Thomaz said there are currently some vocal special interest groups, the Tahoe Prosperity Center, Lake Tahoe Visitor's Authority, and Tahoe Beach Club inclusive pressuring local government authorities to streamline cell tower approval. They myopically claim that rapid cell tower deployments are necessary under the banner of “prosperity.” They ignorantly and incorrectly profess to the public that there is no evidence that cell towers have any adverse effect on environmental quality. Despite being presented with thousands of pages of science, they dishonestly continue with the exact same narrative.

Congress created the Tahoe Regional Planning Agency in order to protect a threatened “National Treasure.” The basin was being assaulted by short-term economic interests that ultimately endangered its long-term future, these included a hideous Emerald Bay bridge, beach high-rises, alpine wetlands development, and other development attempts that would strip away the very character that makes Tahoe a treasure. The current cell tower deployments are a new chapter in this very tired story. They threaten to strip away the scenic and wild character of the basin. Radiofrequency radiation kills-off pollinating insects, which in-turn lowers the yield of alpine berries and seeds, which then diminishes the renewable food supply, and hence the populations of birds and mammals. The low-intensity radiofrequency radiation also stresses migratory birds. Furthermore, hundreds of thousands of tourists are drawn to the Tahoe basin to see its unique wildlife populations, and urbanization would significantly diminish this appeal, causing economic harm. Cell towers also diminish real estate values. Because the continued installation of cell towers is a threat to the long-term prosperity of the basin, I plead that you implement a moratorium on cell towers until the long-term impacts are understood.

Ira Einhorn said concerns raised by local special interest groups that we “will all die” in a freak inferno unless there is a rapid deployment in cell towers are unfounded conjecture and baseless speculation. There is no hard evidence whatsoever supporting the certain likelihood of a historically extremely rare scenario; or such event resulting in a mass-casualty. The canyon gorge

May 27, 2020

topography, vegetation, and associated "Venturi Effect" fire weather in Paradise, CA is actually quite different than that surrounding our alpine lakeside cities. Many people died in the "Camp Fire" because the roadways did not have the capacity to evacuate trapped people. Cellphones have actually created stampedes in a wide variety of emergencies.

Groups exploiting this tragedy, such as the Tahoe Prosperity Center ought to be ashamed! I have firsthand knowledge that close relatives of victims of this tragedy are generally angry how their loss has been used statewide to sell all sorts of things, including political decisions that the victims certainly would not have supported if they were alive.

Cell towers are neither the only way nor the best way to provide network connectivity to residents. Cell towers transfer real costs to the environment. Science proves that cell towers damage trees at the cellular level, triggering stress responses. Conifers secrete extremely flammable terpenes--possibly to ward off typical beetle infestations in response from stress caused at the cellular level, in this case because of RF radiation. This actually raises fire danger.

Furthermore, the pulsed microwave radiation used by 4G/5G cell towers is known to cause extremely adverse neuropsychiatric effects including depression and several well documented suicides. It is just as likely or perhaps unfounded as a mass-casualty conflagration that these towers could be the proximate cause of a mass-shooting: known RF-induced depression such as in that in future teenager could cause him or her to act out in violence at school or a public event. We need a moratorium on cell towers and decisions based on current science, not speculation off freak disasters.

Gaylord Nelson said TRPA needs to implement a moratorium on wireless telecommunications facilities (WTF's) deployments, until it is able to assess the serious degree that such installations are undermining its own climate change policies. Cellular broadband is one of the most energy inefficient means of information transmission imaginable. Energy is radiated in a wide range of directions such as to send an adequate signal to just a single point. The energy effectively lost through the air is tremendous. Furthermore, these towers and phones constantly "ping" the each other with idle chatter just to be able to connect a call.

The greenhouse gas emissions associated with continuously running a macro cell tower transmitter with 47,090 watts of effective radiative power (or 187.2 kilowatt-hours per day) is a sizeable fraction per day of the power a household will use in an entire month! The agency policy is to reduce net power consumption, and there needs to be analysis on the impact against the agencies energy consumption goal and policy.

The new 5G frequencies increase the data capacity because the signals travel a much shorter range and thus limit inter-tower interference. However, the very reason this frequency band's range is limited is because the energy is lost heating up the air! We just phased out incandescent lightbulbs because of thermal and electrical waste, and now we are asked to adopt kilowatt microwave transmitters! This is all being done to make some greedy corporate giants milking a bad technology even wealthier, at the complete loss of the environment. 5G transmitters create thermal islands around each site, which also have an obvious potential for environmental harm.

When you compare cellular to fiber optics, the waste is dramatic: a milliwatt laser diode can continuously send broadband signals tens of miles through a single fiber optic strand, whereas it

would take a 50,000 watt transmitter to send this same signal to the same point through the air. The disadvantage of fiber optic terminals being spatially fixed is not an issue for home broadband, because houses do not get up and move around. Setting-up a cellular infrastructure to provide home broadband is horrible public policy. The obvious answer is fiber-to-the-home; and compact home Wi-Fi networks are always an option for those who must have Wi-Fi calling available to their "smart" phone.

Such extremely wasteful uses of energy are responsible for global warming. This is resulting in one of the larger mass-extinction events in geologic history. In this context, the policy choice is easy. Do not permit this waste! TRPA needs a moratorium on Cell Towers while it assesses the impacts.

Concerned Citizens of the Tahoe Basin said they need a moratorium on cell tower installations until the TRPA develops its own threshold findings specific to the sensitive Lake Tahoe alpine environment. Arbitrary cell tower installations add uncertainty to real estate values, cost homeowner equity, unexpectedly ruin a family's nest egg, and generate large health expenses that we all pay for one way or another. A single cancer treatment regimen costs between \$100,000 and \$1 million and human life, itself, is invaluable. Even small risks which result in grave consequences must be taken very seriously. Because of the large numbers of residents exposed to this risk, the cost of doing nothing would result in an increasing number of people, many of them young, developing cancer and suffering other health effects; this extends to wildlife too. We have long proudly held a constitutional liberty in this country to personally make informed choices over the risks we exclusively take against our own health and bodily integrity. Regarding cancer, these ethos appear in California law through Proposition 65. Cell tower radiation is far worse than purchasing a cup of coffee, processed meat, BPA plastics, and MTBE gasoline. Such purchases are all informed choices. Unlike the latter, cell towers incessantly and non-consensually intrude radiation into our bodies with harmful cumulative exposure. Moreover, carcinogenic risk is not simply additive; there are synergistic effects because when cellular repair is consumed by one genotoxin, DNA is far less protected against additional mutagenic threats such as radon gas, Ultraviolet light, or "recreational splurges." Callous infliction of bodily harm and disregard for home equity is un-American. We can do better."

Tahoe Residents for Actual Prosperity of the 4G/5G moratorium said the simple high school physics assumption that radiation can only cause cancer by being of a high enough photon energy (UV/X-ray) to dislodge electrons and break chemical bonds is wrong. A preponderance of scientific evidence clearly indicates that radio frequency (RF) radiation causes reactive oxidative species (ROS) in living cells and free radical production. Microwave radiation alters the antioxidant repair mechanism resulting in a buildup of reactive oxidative stress. Free radical DNA damage results, as well as reproductive harm and some electro-hypersensitivity effects. Laboratory toxicology experiments show DNA damage directly resulting from microwave RF exposure, and epidemiology has found cancer rates near cell towers are upwards of three to four times higher than background rates; this aggregate rate approximates the vehicular fatality rate in the US! Despite long emerged science, the captured FCC continues to apply an outdated standard it imported from the "National Council on Radiation Protection" in 1996 before cell phones were widely adopted or any direct science existed to expose actual health effects. The FCC exposure standards are now 10,000 times higher than the 0.1 $\mu\text{W}/\text{cm}^2$ recommended by current science. Cell towers should not be located less than 1,500 feet (~500 m) from the public or sensitive wildlife. Telecommunications are a trillion-dollar industry, and their corporate lobbying has been tremendous. The TRPA is not prohibited from regulating RF emissions limits as it is neither a state

nor local agency (Lake County Estates, Inc, v. Tahoe Reg. Planning Agency, 440 US 391, 401, (1972)).

Jacqueline London said she's requesting a moratorium on the implementation of cell towers. While there are the many commonly discussed health issues from radio-frequency radiation, that this Board should take seriously, she's concerned that the unique construction materials of these towers pose a significant danger to Lake Tahoe water quality. Rainwater flushing down the many cell towers wash UV-degraded microplastics, particles of synthetic fiber, dyes, leached chemicals, detergents, and manufacturing residues from "stealth tower" artificial pine needles, intermixed with machine oils, and printed circuit-board treatments from the Antenna mounts. This will introduce both microplastics, and soapy, oily, toxic residues into the stormwater drainages and thus Lake Tahoe. Microplastics have been identified as an emerging threat to the lake, often entering it from urban runoff.

Many cell towers also require construction and installation of a diesel tank for an emergency generator. A leak of any sort above ground or into the water table from any of these facilities could cause catastrophic and irreversible damage to the lake, its scenic shoreline, and the intermediate wetlands and riparian areas that are habitat for aquatic life, waterfowl, and fragile alpine plants. It could also contaminate drinking water wells. A diesel spill would cause direct poisoning of wildlife and plants. A spill or leak could occur from a fueling accident, corrosion, or cracking of the tank through earthquakes, land subsidence, frost heaving, extreme thermal stress, or by blunt impact from the falling of any of the many surrounding pine trees during a violent winter storm.

Frederick de Moleyns said he addresses you with heavy concerns about the rapid cell tower deployment in the Tahoe Basin. There is a vast and rapidly growing body of hard science proving that the radiation used by this technology is an emerging threat to the Tahoe Basin.

The most prestigious scientific journal NATURE published several articles on the effects of radiofrequency (RF) radiation on migratory birds, butterflies, bees, other insects, and mice, which make it unequivocal that RF radiation has the potential to harm, harass, or stress wildlife populations. NATURE also recently published a new study confirming RF radiation causes oxidative stress leading to DNA damage. Hundreds of scientific publications demonstrate the potential for serious adverse environmental effects to the protected Lake Tahoe ecosystem. This very fragile alpine ecosystem is along a salient migratory bird path; there is far more at stake than just the human populace. Even where cell tower antennas have ground fencing sufficient to protect humans from RF exposure above the Federal Communication Commission (FCC) limits, migratory birds inclusive of northern goshawks, peregrine falcons, osprey, bald and golden eagles regularly perch in the stands of trees where these antenna towers would be installed. This federally protected wildlife is certainly being exposed to radiation above the FCC's limits designed for human exposure. Peregrine Falcons and Northern Goshawks are federally protected migratory birds, that are further protected within TRPA's designated disturbance free zones.

Because Lake Tahoe is such an incredibly special and environmentally sensitive place, Congress created the TRPA in an unusual manner so as to allow it to create extraordinary environmental regulations, it even permits it to regulate radiofrequency emissions at levels below those chosen by the FCC, if necessary, to protect the basin. The science is now here that this basin does indeed need such protection.

Mono-pine antenna towers are particularly harmful as they mimic predatory bird habitat, and hence invite eagles and hawks to perch within the intense near-field radiation of 50,000-watt ERP antenna panels to their own peril. For this reason alone, the board needs to act. TRPA staff left to their own discretion have already approved a Macro Cell Antenna within the Truckee Marsh Bald Eagle Winter Nesting Site despite our national bird being expressly protected from harm by federal law!

Charles Fairbanks said the cell tower densification required for ever-increasing cellular broadband consumption is not sustainable; adhering to this trend will dramatically change the environmental health and visual character of this region which congress has rightly called a National Treasure. When the region serviced by a macro cell tower is at maximum capacity, the Telecom solution is simply to split the area with an additional tower. As the demand is marketed to the public such as to be exponential, so will the requisite construction of towers. This will ultimately require stands, then groves, and ultimately a forest of iron Mono-pines, requiring removal and artificial replacement our real forest. The dramatic and rare scenic beauty of the Lake Tahoe Region is the reason US Congress recognized Lake Tahoe as national treasure and exercised its unusual and exclusive right to create a bi-state compact in order to protect it. As the agency created and tasked with carrying out this heavy responsibility, you must order a moratorium until you fully understand the eventual visual impact of implementing this infrastructure with the density necessary to function.

Monica Eisenstecken said she's extremely concerned about the rapid increase in the number of cellular facilities at Lake Tahoe. These are dangerous to Tahoe's sensitive environment. Trees, wildlife, birds, insects, plants and more are all negatively impacted. Your Board has never even required study of this issue. TRPA's mission is to protect the environment. While this threat to the environment did not exist when your first Regional Plan was adopted, it is now a severe threat which will only get dramatically worse with the rapid roll out of new 5G infrastructure.

We need a moratorium on new cellular facilities now so that TRPA can create appropriate standards for the protection of Tahoe's sensitive environment. There is ample evidence that increased levels of EMF's are a hazard. Please, take action on this immediately before more damage is done!

Heidi Teachout said with millions of Americans now working and learning at home, many of us are spending more and more time online. While the internet offers us many opportunities for communication, exploration and collaboration, in many homes it brings with it an unseen problem: exposure to radio-frequency microwave radiation ("wireless radiation") that is emitted from all wireless devices, including cell towers, laptops, tablets, game consoles and smartphones. An increasing number of doctors and public health experts are recognizing that our almost constant exposure to wireless radiation is impacting our health. Scientists at Yale University have linked fetal exposure to wireless radiation with abnormal brain development in lab animals, and a recent \$30 million-dollar study by the National Toxicology Program of the National Institutes of Health found "clear evidence" of increased cancer risk as well as DNA breaks associated with exposure to cell phone radiation. The evidence linking parotid gland tumors and certain types of brain cancer with the use of cell phones is strong and growing. Studies have consistently shown that young children are uniquely vulnerable to the impacts of wireless radiation, as are people with implanted medical devices and those with compromised immune systems. Because the radiation seems to impact our bodies at the cellular level, it can manifest itself differently in

different people. We need a moratorium on new wireless 4 and 5G systems at Lake Tahoe. They are a threat to all of us. Won't you please begin to protect those of us here with families?

Norm Nash said his family played a major role in developing many of the initial subdivisions at North Lake Tahoe, and in Washoe County. With the benefit of his years of experience with Tahoe, he can say with some certainty that the majority of visitors to Tahoe, and in particular Tahoe homeowners and residents, are not there to enjoy gambling and nightlife in some isolated environment staring at a screen in artificial settings. They are there because they value a direct and palpable connection with nature and have a desire to step away from the hectic pace of modern life in the Bay Area, Sacramento or Reno. Our private development at Incline Lake, for example, thrived for 70 years as a place for homeowners and their guest to interact with the natural beauty of the lake and the magnificence of the Sierras within a comfortable drive from Reno. It was preserved as a natural and unadulterated ecosystem within the larger Tahoe Basin. He's sure that a cell tower in the immediate area of those homes would be met with fierce resistance. Cellular facilities are not only well-documented to be hazardous to the environment, but they would instantly result in a dramatic drop in the fair market values of surrounding homes. As it is relevant to your mission as Board members, however, we can safely say that the latest cellular bells and whistles are not only unnecessary to the Tahoe experience, they are an impediment to it. The goal of the recreation element of the Regional Plan is to manage recreation consistent with the guidance provided in the recreation threshold policy statements to "ensure equilibrium between the region's natural endowment and its manmade environment" (Public Law 96-551/TRPA Compact). 5G and 4G are indisputably hostile to Tahoe's "natural endowment". They are also hostile to the manmade environment in terms of property values and public health. There is no equilibrium that can exist if TRPA persists in approving every cell tower that the telecom industry seeks to profit from. If TRPA will not stand up for the natural environment and its residents it is quite simply failing in its mission as defined in the Compact.

Amanda Reinhard This is a cry-out for help! "We the People," which include a daily growing of many in your community, have become educated on the harms of cell tower technology, and microwave frequency radiation. We demand a moratorium on current cell tower technology deployment based on the science that is already in place. Tahoe cannot take this risk. You are an agency that is ultimately responsible for the health and wellbeing of the Lake Tahoe basin and its communities. It's in your best interest to protect the people as well. The studies and the facts being reported are very real. If these cell projects continue deploying this destructive technology, our basin will be destroyed. I'm sure you want to do a great job and protect the basin. Studies show our forest and fauna, lake ecosystem, animal population, pollinators, air quality, streams, and wetlands will suffer greatly and ultimately cause death from this. We currently are fighting and presently quarantined to evade the COVID-19. We are in a serious situation. The cellular technology is going to give us a new face for fighting for our lives. She can't imagine with all the documented factual information from real science and the voices of the people, you would want to continue a project that would be detrimental to the Tahoe basin and the people. The "buck stops here" with your decision. Our fate is in your hands. Studies have shown our health will be affected. People around the world are actually dying from new cell tower technology, particularly in Switzerland, China and Italy. Where it is most effected by the Corona virus. 3,000 doctors from around the world have signed petitions to bring awareness that this is a deadly and dangerous technology. It is unacceptable to allow large cell "mono pines" towers in any of our neighborhoods. Her family moved to South Lake Tahoe 35 years ago to be free of a cosmopolitan fast-paced lifestyle; to live healthy, active, outdoor lifestyles and not be bathed in toxic EMF

May 27, 2020

frequencies. In 2015, 215 scientists in 41 countries proved that Electromagnetic fields effect all living organisms. They have petitioned the U.N., refer to <https://www.emfscientist.org> This technology effects our DNA. All the relevant facts have been presented to your agency from herself, and professional experts, doctors, scientist and your public. Your community has people in it that actually care about the environment and the people.

Eric Windheim said he's a Certified Building Biology Environmental Consultant & Certified Electromagnetic Radiation Specialist. In 1959 his family boated from Camp Richardson to Meeks Bay: He was awed by the natural beauty of the pristine lake and basin then and now 61 years later. Sadly, it looks like big city wireless radiation toxicity is proliferating without true environmental review or constraints in the Tahoe basin. Cell towers are sprouting up in residential and wildlife areas.

Since the TRPA Regional Plan of 1987, the Update of 2012 and the 2015 Threshold evaluations did not discuss or evaluate the wholistic impact of WRTF facilities on the environment and its inhabitants. He urges you to create a temporary moratorium, right now, until you do so. This will mean a ban on consideration, construction or upgrade of any and all WRTFs immediately. Other commenters will supply the studies and papers that clearly document the harm, injury and damage that Radio Frequency Radiation (RFR) has on all living things, worldwide and in the Tahoe Basin. More and more the American People are waking up to the hazards of WRTFs and the false safety purported by the FCC and industry organizations. Unwitting reliance upon so-called thermal only safety guidelines adopted or created by the agencies and organizations that are captured by or serve the wireless industry is not wise or defensible. A captured agency like the FCC can't be relied upon to protect the Tahoe basin. Please see this link for documentation on how the FCC is captured: https://ethics.harvard.edu/files/center-for-ethics/files/capturedagency_alster.pdf

Above all, people do not want these WRTF anywhere near their homes or schools. My profession as a Building Biologist and Electromagnetic Radiation Specialist is based in science and uses nature as a model. The goal for clients is to detect, measure, assign a risk level, suggest and effectuate solutions that reduce the EMF exposure in the house. When they do, both clients and their pets feel better: this is one reason he gets about half of all his clients from medical doctors and pediatricians in particular. He sees the tremendous pain, suffering injury and damage.

Josh Moore is very concerned about the coming 5G systems that are already appearing around the Lake. He doesn't want them, and don't know anyone here who wants a 5G transmitter anywhere near them. My understanding is, however, that they need to be close to all of our residences because of their limited range. He's shocked to hear that you haven't even looked at the dangers of these things. Please don't force these down our throats without looking carefully at all the evidence of their harm on the environment and our local population!

Steven Veit-Carey said he'd like to direct your attention to FCC bulletin No. 65, section 4, entitled Controlling Exposure to RF Fields. This is the current standard that all cell companies are familiar with and has been around for 20 years. The FCC could not foresee microcell towers in neighborhoods and thought cell antenna would only be on top of tall buildings and on remote ridge tops. Their concern was for people in office buildings and high rise hotels that would be close to these RF emitting antenna. They never thought the general public would ever be close enough to be exposed. The bulletin

states that compliance requires that people who will be near broadcast antennas should not get any closer than 15 meters (or just under 50 feet). The bulletin goes on to say that when accessibility to cell antennas is restricted within the 50 foot perimeter the facility can then certify that it complies with FCC requirements. In addition, bold print states that the FCC is worried about exposure limits not emission limits. This brings in a time factor. The longer you are in an RF field the more exposure you have (sort of like a sun burn). This comes in to play when maintenance workers need to work inside the 50 ft. restricted area. The FCC guidelines state, "The work may have to be divided up and carried out during several intervals of time." The occupational exposure time recommended by FCC guidelines is six minutes. The FCC is serious about this as they imposed fines of \$85,000 on two cell phone companies that co-located on top of an apartment building for not securing a 50 foot perimeter.

Susan said we need a temporary moratorium now to stop and reflect on what you are unintentionally allowing to happen. Profits for the telecom industry profit at the expense of the environment. Solid science that shows a serious threat to the environment from this complete failure to address the issue. TRPA's mission is to preserve your ability to protect the environment from his threat. It may already be too late in some areas, but you can at least prevent further degradation if you act now to impose a moratorium on" any new wireless facilities.

Tracy Reinhard said at least make sure the cell tower projects are safe before implementing them. As a resident of beautiful Tahoe, she's not sure about this technology being the most helpful right now in combating the Covid-19 19 pandemic, due to the super frequencies and because she's no scientist she always makes sure the microwave door is closed before nuking food. She knows the environment means a lot to you as we fight as a team for the Tahoe basin. Putting tower projects on hold could make sense as we have a new pandemic to deal with in addition to the unknowns of this super tech towers. Our collective and individual immune systems are most vulnerable due to the pandemic before the pandemic we were worried and now we feel the towers will not help the situation but only accelerate the demise of health of living things in the Tahoe basin.

Ben Lebovitz said his concern is over the impeding efforts to install cellular infrastructure that is injurious to the neighborhood. The evidence is overwhelming and the public outcry for support to the constituents residing in the basin is alarming. A petition demanding an immediate moratorium on all cellular facilities has reached over 3,600 signatures. The applications provided from the telecom industries have been riddled with errors, from distance to buildings, property land coverage errors and would exist upon previously marked sensitive TRPA land and waterway maps, errant presentations of visual impact and deceptively displaced natural and protected creeks to appease the presentation. It is unlawful that a consideration to produce cellular infrastructure with falsified information be considered and approved. The city and TRPA have an important decision to thoroughly fact check against the evidence presented and can win. Pressuring big wireless to install fiberoptic infrastructure to support their mission will not only protect the lives and environmental executive orders but achieve a goal of support. The language around fear for communication during forest fires is a fake threat. The cellular towers above ground are a grave threat to the safety and health during a forest fire.

They would be the first to erupt and would limit our potential communication during an emergency. Having updated fiberoptic infrastructure would provide greater safety for the community and preserve the natural and environmental concerns. Additionally, city owned fuse boxes and harsh penalties would allow the city to retain financial gains in the threat of big wireless greed.

Many cell towers also require construction and installation of a diesel tank for an emergency generator. A leak of any sort above ground or into the water table from any of these facilities could cause catastrophic and irreversible damage to the lake, its scenic shoreline, and the intermediate wetlands and riparian areas that are habitat for aquatic life, waterfowl, and fragile alpine plants. It could also contaminate drinking water wells. A diesel spill would cause direct poisoning of wildlife and plants. A spill or leak could occur from a fueling accident, corrosion, or cracking of the tank through earthquakes, land subsidence, frost heaving, extreme thermal stress, or by blunt impact from the falling of any of the many surrounding pine trees during a violent winter storm. It would also be advantageous to consider space for community maker space within the event structure. He would be happy to offer some research on how this could benefit the community and the popularized systems for member-based access to create at a local level. Something so important to continue to produce craftsmanship and quality to last within a local footprint. Thank you for your consideration and continued support to our community. Please enact an immediate moratorium on all cellular infrastructure and hear the people's cry.

Lee Afflerbach, from CTC Technology and Energy: "Each small cell is capable of almost putting out the same energy as one macro cell. The radios that they are using are the exact same radios that are up on the macro towers. It's not a different technology, it's the same boxes as on macro towers. He sees them all the time." The following comments are relevant to turning off all Small Cells in the Tahoe Basin during the coming COVID-19 community spread. Rea the relevant correspondence with the City of San Francisco at these links: [scientists4wiredtech.com/sebastopol/#death](https://www.scientists4wiredtech.com/sebastopol/#death) and [scientists4wiredtech.com/covid19/#fail](https://www.scientists4wiredtech.com/covid19/#fail) The TRPA can take immediate action to stop the melatonin suppression and immuno-suppression of the Tahoe basin population caused by unnecessary, insufficiently regulated, forced exposures to hazardous, pulsed, data-modulated, Radio-frequency Electromagnetic Microwave Radiation (RF-EMR) for strictly frivolous entertainment purposes. These sWTFs are unnecessary, ancillary and frivolous sources of entertainment; they are not needed for making emergency calls, we could already do that in Tahoe basin, without any of these sWTFs.

Nikki Florio said as you know there is a great deal of controversy surrounding 5G human health and environmental impacts. She's writing this letter as a 20+ year environmental professional who has provided information on environmental and human health for decades; with a focus on 5G and related technologies currently. The information provided below is a collection of topics that will demonstrate irrefutably, the negative impacts of 4G/5G on the environment and how it exacerbates the already threatening, wildfire potential throughout the basin. You must exercise the precautionary principle and call for an immediate moratorium on the installation of these towers and lamp/light posts. In approving these towers, you will never meet TRPA's legal mission or environmental goals.

There are nearly a billion and a half insects on Earth and without them, humans will not survive. These are not simply "bugs", but orders of animals that are the foundational to ecosystem health. The bulk of them are pollinators, many also serve primary and secondary sources of food for everything from other insects themselves, to bird, bat, small mammal, amphibian, reptile and other animals found in the Tahoe basin and throughout the world. While there are many threats surrounding their losses one of the greatest is cell tower emissions. Since the early 2000's through today around 250,000 2G and 4G towers have been installed, with current 5G millions more have been added. These towers all add to the microwave and millimeter wave (mmWave) frequencies that are overwhelming them. Regarding ecosystem impacts: fewer insects means fewer flowering plants in the region's meadows, grasslands, marshes, and forests. You will see via info below, how 4G/5G mmWave technology impacts these and other pollinators and why it needs to be halted immediately throughout the basin.

If we lose the millions of species of insects and animals that make up the great pollen nation within the next handful of years and we will if 5G/ IoT is successful, the result will be a final implosion of our food and ecosystems. We will lose animals that have coevolved with flowering plants for millions of years. Plants that we need for food, oxygen, soil stabilization, soil remediation, water and moisture, retention and release, and of course psychological health. "Health and safety" testing of 5G has been fast-tracked by the FCC, a five member entity composed of telecommunication executives. Unfortunately, they neither excised, nor utilized, any meaningful amount of environmental or biological research in regard to 5G. They utilize no independent physicians or scientists as consultants. 5G's spectrum mmWave technology is deadly to insects, birds, bats, amphibians and a host of other animals - including humans.

Her job is to expose Radiofrequency Radiation (RF) impacts leading to the extinction of the great pollen nation: the scope of winged and terrestrial insects, birds, bats, small mammals, primates, salamanders, and other animals that pollinate the bulk of Earth's flowering plants in both ecosystems and food systems. Pollinators are responsible for pollinating the nutrient dense foods that have allowed humans to evolve into the species we are today. Below are some of the impacts, the studies correlating these impacts are numerous.

Insects: Lake Tahoe: Ants, beetles, bees, butterflies, moths, mosquitoes, dragonflies etc. EMFs damage to insects' exoskeleton; primarily to the chitin, leaving them susceptible to bacteria 5G frequencies impact both the antenna and bodies of insects essentially penetrate insects' bodies resulting in "cooking" them; "causing fever-like impacts that affects their behavior, physiology and morphology." EMF Impacts on bee navigation.

Animals: Damage ranges from cellular damage to neurologic impairment.

Soils: Lake Tahoe: meadows, marshes, forest. Damage to soil microbes and cell walls of fungi/chitin Towers Significantly effects microbial diversity and alters vital systems in microbes. Increases susceptibility of pathogens.

Plants and Trees: Lake Tahoe: grasses, wildflowers, domesticated flowers, shrubs, conifers, deciduous.

GOVERNING BOARD

May 27, 2020

In a nutshell, 5G will wreak havoc on plants throughout the basin. Plants and trees absorb mmWaves. From the splitting of DNA/RNA in plants; resulting in toxicity, to gross increase in terpenes (100x) exacerbating forest stress and influencing explosive fires. High frequency towers will mean distressed trees surrounding the towers, and toxic plants - no more backyard gardens, pollen in conifers themselves will be toxic, flowering plants will be toxic for insects, butterflies, hummingbirds, and other pollinators. Damage to trees near towers, see email (see link in emails you received from 3.23.20: TRPA Requested Moratorium on 5G - Env Health and Wildfire Impacts) In essence, 5G will wipe out the bulk of insects, birds, bats, small mammals and other animals in the basin within an extraordinarily brief timeframe. As noted in an earlier meeting, when you go to areas that have 5G you hear only silence. Dr. Martin Pall Biomedical Professor of WSU recently stated that "5G is the stupidest idea in the history of the world." Utilize the precautionary principle. Keep the environment safe from this deadly technology.

Peggy said as the telecom industry accelerates their deployment of cell towers in the Tahoe Basin, it occurs to her and others that the TRPA has no master plan in place to protect Tahoe's scenic and environmental integrity. In my neighborhood of Al Tahoe on the south shore, there have been several unsightly small cell (5G) installations in the public right of way. This is happening in most south shore residential neighborhoods. The recent city approval of a 112 foot mono tower in a view corridor residential neighborhood on Ski Run Blvd. is a further assault to the scenic corridor. Other existing large cell towers like the one in the Tahoe Keys are unsightly and cause questions like, "how did that get approved". Your attention to this matter is needed before this situation gets completely out of control and possibly irreversible. The request is for the TRPA to put in place a temporary moratorium until environmental concerns can be addressed.

XIV. ADJOURNMENT

Ms. Novasel moved to adjourn.

Chair Mr. Yeates adjourned the meeting at 4:33 p.m.

Respectfully Submitted,



Marja Ambler
Clerk to the Board

The above meeting was taped in its entirety. Anyone wishing to listen to the tapes of the above mentioned meeting may call for an appointment at (775) 588-4547. In addition, written documents submitted at the meeting are available for review



**TAHOE
REGIONAL
PLANNING
AGENCY**

P.O. Box 5310
Stateline, NV 89449

775-588-4547

www.trpa.gov