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Subject: Miller v. TRPA legal filing - Public Interest Comments, Feb 28, 2024 TRPA Mt
Attachments: Objection to MJ Findngs and Recommendations-FINAL (as filed)_with stamp and signatures.pdf

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Please provide these comments for public information in connection with Item XI of the TRPA Governing Board agenda for the meeting of February 28, 2024:

This court filing in Miller v. TRPA U.S. Federal Court, Eastern District of CA (Sacramento) was filed in response to the recommendations of Magistrate Judge Claire, a lower judge in my case, to the District Judge Mueller that must provide a final ruling. The filing is in objection to numerous errors of fact and law, issued impatiently – before TRPA even had opportunity to reply to my prior Motion. The Judge's Order is extraordinary in my admittedly-limited experience for being so gross a travesty of justice. Perhaps I'll post the Magistrate Judge's order one day, but everything is roundly refuted as you can read in my filing, with no need for her garbage.

The District Judge will have to overcome my objections for the decision to stand on appeal, or the judge will have to come up with some other lame excuse to dismiss the matters. It is provided here for the benefit of public education. The Magistrate Judge simply cited all of TRPA's nonsense from prior motions, in essence granting TRPA all "deference" despite its broad failings. The MJ likely didn't see coming the U.S. Supreme Court's current movement to gut the "Chevron defense" the TRPA relies so heavily on to conduct its illegal activities, and which has empowered it unjustly as discussed in my October 2023 comments in the public interest.

In joy, Alan Miller, Professional Engineer

Attachment: Objection to MJ Findings and Recommendations-FINAL (as filed)_with stamp and signatures

Alan Miller
PO Box 7526
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(530) 542-0243
Plaintiff, in *propria persona*

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALAN MILLER,

Plaintiff,

v.

TAHOE REGIONAL PLANNING AGENCY,

Defendant.

No. 2:22-cv-02113-KJM-AC PS

OBJECTIONS TO MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS

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Public Health and Welfare Act, 42 U.S.C. § 1985

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Chapman v. California, 386 U.S. 18, 23, 26 (1967)

Henderson v. Mayor of the City of New York, 92 U.S. 259, 263 (1875)

- Federal Courts of appeals

Hawaii Stevedores, Inc. v. Ogawa, 608 F.3d 642, 652 (9th Cir. 2010)

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Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017)

Other Authorities and References:

Nature (Nava, V., Chandra, S., Aherne, J. et al. Plastic debris in lakes and reservoirs. (*Nature* 619, 317–322 (2023). https://doi.org/10.1038/s41586-023-06168-4)

For the reasons set forth below, plaintiff objects to magistrate judge's findings and recommendations (ECF 38, hereinafter "OFR" or "order") and further pleads that his motion for summary judgment (ECF 28, "MSJ") be GRANTED, defendant's cross-motion (ECF 35, "CMSJ") be DENIED, and that judgment be entered for plaintiff and the case be closed. Presentation follows order's outline. Plaintiff further adopts by reference all his past pleading, motions, and exhibits. (Fed. R. Civ. P. 10(c)) This motion is filed timely after plaintiff contacted the Office of the Clerk, learning the court would be closed on Friday, November 24, 2023 for a Thanksgiving "day-after" holiday at the discretion of the Chief Judge of the District, though the closure was not announced on the court's website, as shown in Exhibit 1. (Local Rule 121(b), Fed. R. Civ. P. 6(a)(1) and 77))

Contrary to what may be gleaned from the synopsis of the magistrate judge (MJ), the actual gravamen of plaintiff's complaint was that in multiple instances, defendant revised a project approval contrary to "a manner required by law." A *fortiori*, plaintiff objects to MJ's fallacious legal premise that "the ultimate question before the court is whether the Governing Board's denial of plaintiff's appeal was supported by substantial evidence and therefore not a 'prejudicial abuse of discretion' within the meaning of Article VI(j)(5) of the Tahoe Regional Planning Compact ('the Compact')." (OFR 1:19-22) Pursuant to the express language of this provision, an adjudicatory act or decision of the agency to approve or disapprove a project may be supported by substantial evidence and yet amount to a "prejudicial abuse of discretion"; this occurs when or "if the agency has not proceeded in a manner required by law."

That fallacious premise is fatal to MJ's findings and recommendations whereas the rhetoric in plaintiff's "twelve separate claims of violative conduct" (OFR 1:18-19) incessantly expound "what the law requires" directly followed by citations to defendant's unlawful actions—*nemo potest nisi quod de jure potest*. The defendant's CMSJ did not rebut that it followed requisite Constitutional law, statutes, and regulations, nor did it meet its heavy burden to prove "beyond a reasonable doubt" that its error was harmless (*Chapman v. California*, 386 U.S. 18, 23, 26 (1967) (before a federal constitutional error can be held harmless the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt; it's not harmless error where government failed to demonstrate beyond reasonable doubt that error did not contribute to adverse adjudication).

Even where plaintiff's MSJ sparsely impugns the defendant's adjudication of the evidence, the thrust of such claim was almost entirely whether or not agency deference was due to defendant's finding, and very rarely on whether the evidence could be trivially construed as "substantial." Plaintiff is entitled that court give no or lesser agency deference to defendant where deference is not or less warranted as a matter of law.

Plaintiff further objects to MJ's myopic focus on defendant's culled *de minimis* evidence as "substantial" contrary to the Compact's holistic *de integro* requirement that defendant base its decisions upon "substantial evidence in light of the whole

record." Notwithstanding, the district court when acting as an appellate tribunal, must consider the record as a whole, weighing both the evidence that supports and the evidence that detracts from the agency's decision (see, *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017); *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001); see also *Int'l Union of Painter & Allied Trades, Dist. 15, Local 159 v. J & R Flooring, Inc.*, 656 F.3d 860, 865 (9th Cir. 2011); *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 652 (9th Cir. 2010) ("The ALJ is expected to consider the record as a whole, including all witness testimony and each medical report, before entering findings"). The dual requirements that court holistically "weigh the evidence" and that it not "exercise its independent judgment on evidence" are not mutually exclusive.

I. Errors and Objections On Review Of The Order: "Complaint"

A two-pronged judicial review standard (OFR 5:27-28) is not needed for claims not pertaining to sufficiency of the soils-hydro report (Claim 9) and foundation excess impervious coverage (Claim 10), for all other claims should be reviewed to determine if the agency has not proceeded in a manner required by law, with "violations" punishable by civil liability (Compact Art(IV)(j)) and remedy also available through tower removal. Only discretionary acts taken lawfully may be reviewed to determine whether the act or decision of the agency was not supported by substantial evidence in light of the whole record, and this finding is irrelevant to the ten other claims. To omit or dismiss acts contrary to law in the analysis is a clearly erroneous and manifest error of law committed repeatedly in the order, in complete disregard of controlling law. Defendant is therefore compelled to again restate in opposition to the order much of what has already been written. 28 U. S. C. §636(b)(1)(A) specifies: "A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law." Such reconsideration of this pretrial order from the MJ, and my pretrial motions, is duly sought. MJ's dismissal of plaintiff' motion to supplement the administrative record (ECF 29, hereinafter "MSAR") is over strenuous objection.

II. Legal Background

This case is about a hole drilled in the ground that gushed like an artesian spring with legal and Constitutional issues the court has failed to address, in reversible error. The issues may be briefly characterized as follows: Congress could not intrude its federal authority into the region to directly deprive plaintiff and other persons in the region with a law trespassing civil rights to participate in agency decision-making, with no public notice concerning projects or code variances of public interest and no opportunity to comment or to obtain a fair and unbiased hearing before the Governing Board without substantial cost. In any case, California did not yield its state Constitutional sovereignty under the Compact and Congress and the two states did not do that, but enacted just the opposite, procedures to freely guarantee civil rights defendant shall follow. Therefore, what the

Congress could not do directly, defendant can not do indirectly through its regulations and its regulatory delegations of authority (*Henderson v. Mayor of the City of New York*) 92 U.S. 259, 263 (1875)), which do precisely the above, are unconstitutional and must be abolished as a matter of law. (ECF 32, hereinafter "Reply," 1:8-16) These regulatory laws were used to deprive plaintiff of several important, protected civil rights in the appeal that led to this case. (Reply 2:21-25; 3:21-24 to 4:1-5, MSJ 18:5-6, MSAR 18:1-11) This is a readily addressed harm and relief is available in this matter if the court will do its duty. TRPA can simply put all variance and permit proposals before the public at a Governing Board meeting for approval and restore the public's civil rights, as a first step. (TRPA permits expire by law three years after adoption. (Art(VI)(p)) Only permits issued in the last three years or pending legal final action are legally affected.)

OFR 1:21 cites to "Federal Rule of Civil Procedure 65" which is a reference to Injunctions and Restraining Orders. Since this order is neither, this reference appears to be an error, possibly a clerical error, as plaintiff is not aware of why § 65 would apply in this case, and the order does not reference either an injunction or restraining order or include required elements for either of those to my knowledge, so it can not serve as such an order. This appears to be a harmless clerical error unless plaintiff is being enjoined or restrained under the section in some way that is opaque, in which case plaintiff objects.

As presented in the order, the facts are not genuine. At OFR 2:10,the statement that plaintiff appealed a "Plan Revision" is an error of fact, as what was appealed was a Variance, which is covered under different parts of the Compact law, as discussed in the Reply at 7:16 -8:29. At OFR 2:2, the order says "he alleges his appeal was arbitrarily and capriciously denied." What plaintiff wrote was not an "allegation," but a statement about judicial review standards: "The reviewing entity is generally charged to determine on the basis of the AR whether the action taken was supported by the whole record, or was arbitrary and capricious, or not in accordance with law." Note the use of "generally," as this was a preliminary general discussion, much augmented and revised in the Reply. (1: fn1) Thus, to characterize this statement as an "allegation" is clearly erroneous and prejudicially biased. The order continues at 2:19, correctly stating plaintiff submitted twelve separate claims of violative conduct, and opines "though the ultimate question before the court is whether the Governing Board's denial of plaintiff's appeal was supported by 'substantial evidence' and therefore not a 'prejudicial abuse of discretion.'" This fairly summarizes defendant's incomplete interpretation, conveniently leaving out mention of the other half, when actions are "not in accordance with law," despite numerous violations of Compact law and its own regulations identified throughout the plaintiff's MSJ, MSAR and Reply. The order then proceeds to ignore every violation factually cited from the administrative record (AR), erroneously concluding no law was broken because it is within defendant's discretion to act in a manner contrary to the law. The order grants defendant wide deference to act contrary to law throughout, where no deference is warranted or lawful. Plaintiff's motions discuss ministerial acts which defendant did not

carry out in good faith and duty to law, and little more, concerning requirements which are non-discretionary. This court deference is a major and reversible error of law riddling the order.

The Regional Plan "threshold" standards are cited at OFR 3:3 and plaintiff will simply note for the public record that the Regional Plan, as majorly amended in 2012, does not contain the words "wireless" or "microplastics" because the defendant has no standards applicable to wireless facilities emitting wireless radiation and microplastics, as it has approved here, and has no applicable ordinances for wireless macrotowers. It misapplies ordinances for "linear public utility" facility exemptions for an excuse to skip environmental review requirements through unexpressed, tortured interpretations. The order cites such standards are "necessary" for the maintenance of the significant scenic, recreational, scientific, or natural values of the region, or to maintain public health and safety in the region. (OFR 3:5-6) Nonetheless defendant doesn't have any standards for the plastics and wireless technologies it is approving, to great detriment, for in addition to the scientifically-incontrovertible damaging effects of electromagnetic radiation from the tower(s) on biological organisms, defendant is risking the drinking water supply for millions of residents of California and Nevada with contamination by microplastics, with no TRPA analysis beyond approving a "junk science" report from a Verizon consultant. Defendant was further willing to risk potentially significant effects to ground water without a hard, scientific, look for this tower. What is at stake for the future of Lake Tahoe is of no apparent consequence to court's consideration as it erroneously removes the bridle and legal bit from the incompetent defendant, which is literally destroying the purity of a world-class resource with its lawlessness, here aided by the court—with a large number of errors as will be discussed. Lake Tahoe is very special and among the most contaminated with microplastics of large water bodies in the world thus far studied as disclosed in the science journal *Nature* (Nava, V., Chandra, S., Aherne, J. et al. Plastic debris in lakes and reservoirs. (*Nature* 619, 317–322 (2023)) Plaintiff implores that the public and court must keep these facts in mind as it reviews this order granting defendant wide deference to do as it will without any regard for the laws or the people it serves.

The order discusses that the Compact directs the agency to adopt and administer ordinances, rules and regulations, stating: "In compliance with that instruction, TRPA has adopted a Code of Ordinances . . ." (OFR 3:10) Boundaries for these agency actions are given by the Compact and have been broadly trespassed in this case. My Reply cited numerous regulations TRPA adopted which are contrary to and inconsistent with the Compact, depriving guaranteed civil rights, so defendant has acted in a number of instances that are not "[i]n compliance with that instruction." (Reply 3:2-20) See OFR 3:14, citing Compact mandates for defendant to administer its ordinances without any discretion to interpret its regulations contrary to the Compact; the court must not grant defendant license to do so, in error. Court fails to comment on the illegal regulations presented, and simply overlooks them as though it is proper to conduct its review under regulations adopted that gut Compact public participation

requirements and set the stage for defendant to repeatedly violate the law and evade judicial review, a reversible manifest constitutional error. (Reply 13:1-9) Even assuming that was so, plaintiff's MSJ, MSAR, and Reply all cite numerous instances where defendant did not faithfully carry out its duties under the faulty, illegal regulations. Therefore, any way one looks at it, the court has committed gross reversible errors of review. The inference is clear: the case outcome has been predetermined, prejudicially by court, to uphold defendant's action to approve the tower under shattered presumptions of deference, despite the genuine facts and despite the laws broken, for reasons not articulated in the order. Chilling public redress of grievances while depriving civil rights is the implied outcome if the prejudicial order stands.

OFR 3:19-20 cites that any development project must meet "applicable" regulations established by the agency. That being true, it is an error for the court to opine in any way that the staff Variance and Plan Revision approvals, or the appeal, carried out under illegal regulations, were in any way proper or in compliance as stated. That is frankly impossible with public input systematically deprived and suppressed as it has been illegally for decades. Nonetheless, the order erroneously states, "The Executive Director (ED) has authority to modify project approvals. See ROP 5.15." (OFR 3:23-24) The ED has no such authority under the Compact; approval of projects and modifications is solely prescribed to the Governing Board by vote at a public meeting. (Art(III)(g), MSJ 1612-17:7, Reply 2:1-15) Delegation of this approval authority is illegal, for it is improper for a project to be approved by the Governing Board members (BMs) to be later modified out of the public eye by the ED, who simply can not be empowered with this assumed, delegated authority—as directed by Congress. The court has simply looked past all this illegality, erroneously and without comment as a manifest constitutional error of law. Presuming the court has the power and duty to overturn the illegal regulations, failure to do so and to silently ignore the whole subject as if it is moot when it is fundamental is a gross miscarriage of justice.

The finding of OFR 3:19-20 is again recited at OFR 4:2-3 with 4:4-6 adding, "some permits being issued by the ED, some applications considered by a Hearings Officer, and some heard by the Governing Board, depending on the project at issue. See Code § 2.2.2." Here the court is finding the whole illegal regulatory scheme plaintiff uncovered and discussed in the Reply is legally proper, without comment, merely reciting from defendant's CMSJ. It is not proper and this is a gross error of law which court fails to address in any way.

Plaintiff's Reply shows the AR contains no evidence of legal compliance with public noticing requirements (Reply 8:15-20), for this project or any other in years, yet the order states, "The Board meets once per month at a noticed public meeting," citing Art(III)(d). (OFR 4:10-11) If court thinks the public noticing deficiencies of the defendant plaintiff discussed as a violation of law is of no consequence, it should state why for the record. In plaintiff's view, TRPA's failures to comply with its own public

noticing rules for newspaper noticing not only violates the Compact, but deprives the general public and those without internet savvy or access, or the desire or time to go hunt information down on TRPA's massive and confounding website, of public notice in a deliberate attempt to disempower and disenfranchise the public. Such failure can not be considered a "harmless error" as it deprives the public, in a manner contrary to law, of among its most basic rights to know the activities of its servants and to participate in public decision-making, and the court excusing and bypassing this deficiency without comment is a manifest constitutional error of law. Far beyond that, TRPA has deprived the public of any notice, internet or otherwise, for whole classes of projects and variances under its illegal regulations. (Reply 2:1-7, 4: fn11)

Court cites that "TRPA's Code creates a means to appeal an Executive Director or Hearings Officer decision to the Governing Board" (OFR 4:13-14) without comment on the extensive discussions in my Reply disclosing the illegality of these regulations. That is an error of law compounded by the court by failing to recognize what ought to be plain error in light of my Reply, with the better part of the page taken up with discussion of appeals which have no basis in law, including Legal Committee hearings concerning appeals: There was never any latitude for defendant to adopt an "appeal" regulatory scheme for its illegal approvals by the ED and HOs, likely improperly for its own convenience. (Reply 2:23-25) The Compact specifies that all variance and project approvals are subject to a Governing Board vote, and may be redressed through litigation only. Defendant corrupted the whole intent of Congress and the states with its appeal set-up, a corruption court is sanctioning in gross reversible error with its mistake-ridden order, and to which plaintiff strenuously objects as affecting substantive civil rights and potential case outcomes, including my own. Court's failure to address the constitutionally-invalid regulatory scheme for project and variance approvals by staff, and TRPA appeals, merely postpones adequate resolution subject to court appeal and *de novo* review unless reversed on review by District Judge.

The only statement with veracity on OFR 4 is at 27, "Failure to take such action shall be deemed a denial of the appeal. ROP § 11.6.2" The appeal plaintiff lodged was denied by a failure to take action in response to his Notice of Appeal on the Variance, which was not the subject or focus of defendant's appeal administration, which erroneously focused on the "Plan Revision." (Reply 7:19-8:6) Despite the extensive discussion plaintiff provided the court erroneously fails to consider these actions "contrary to the manner of law," and that my appeal was legally decided by inaction. It failed by default because the Board members (BMs) never voted on my appeal of the Variance. They voted on a Plan Revision application. (Reply 8: 7-12)

III. Legal Standard

The order discusses the legal review standard, citing Compact law, and noting at 5:27-28 the statutory definition of "prejudicial abuse of discretion," with that two-fold mandate showing that "the agency has not proceeded in a manner required

by law" is fully sufficient and of equal legal standing with " if the act or decision of the agency was not supported by substantial evidence *in light of the whole record*." (*emphasis* added) Court ignoring the former part of the review standard is a clear error, and a manifest constitutional error by ensuring that legitimate review rights are usurped and constitutional civil rights to due process and equal treatment are compromised to exact maximal harm.

The order notes at 6:11-12 that in reviewing the AR the court must determine "whether TRPA's *procedures* provided 'substantial evidence' of compliance with the Compact language." (*emphasis* added) This court has not yet done that, for it has failed to comment on the discussion of Rules of Procedure (ROP) and the Code of Ordinances (COO) adopted by defendant in a manner contrary to law as alleged in the Reply at pages 2-3. It is a manifest error for the court to find upon review that the procedures comply with the Compact language when they do not. The remainder of the page cites various meanings for "substantial evidence" concerning project-level judicial reviews in case law, which cases are wholly unenlightening concerning the matter of illegal regulations the court has skipped past. The most "substantial evidence" in this case is that defendant's regulations violate the Compact, a manifest constitutional error the court has not addressed.

IV. Administrative History

1. The Initiation of the Cell Tower Project

Court, like defendant, notes plaintiff didn't appeal the Project approval (in 2021). (OFR 7:20-23) That this is "inaccurate and irrelevant" as a matter of law in this case is addressed in plaintiff's Reply (10:6, fn48) and my Reply's assertions are not addressed with any specificity by court in the order.

2. The Plan Revision (Variance)

The "Revised: Soil Project Approval Waiver" cited (OFR 8:2-3) constitutes a Variance from the TRPA Code of Ordinances (COO), as discussed in the Reply. (7:15-8:14) Defendant's issuance of the revised permit (OFR 8:12-13) was unknown to plaintiff prior to filing my NOA on the Variance. (Reply 8:7-14, fn36) It was this Variance that was the basis of the appeal. The court errs as a matter of fact in stating, "On August 22, 2022, plaintiff appealed the Plan Revision . . ." There is no legal evidence for that in the AR, as alleged in the Reply, and nowhere rebutted.

3. Plaintiff's Appeal of the Variance to the Governing Board and Request for Stay

Plaintiff again objects to the whole of the appeal discussion in OFR 8:16-24 as having no basis in law, being a perversion of the Compact's mandates that deprives plaintiff and the public of constitutionally protected civil rights. It is factually erroneous and incomplete, taking no note of the illegal scheduling of the appeal hearing by defendant that further harmed plaintiff by depriving due process rights and rights to equal treatment under the laws for a fair hearing. See section VI.B.2., Claim 2, below.

4. Observations of the Excavation by a Certified Professional Soil Scientist

Plaintiff has noted that what can be said of the soil scientist's observations in response to OFR 9:2-3 is that they were post-*hoc* rationalizations for examinations required prior to approval and not performed, with TRPA staff incompetent to administer its regulations pre-approval, and without expertise the agency needs and does not possess, as discussed in plaintiff's Reply at 10:13-18. It is only defendant's illegal regulations that give it opportunity to err and escape review for its faulty acceptance of ground water investigations by unqualified professionals, as adjudged by unqualified professionals on the TRPA staff.

At OFR 9:11 there is a parenthetical reference by the court to an "audio file" of the Legal Committee hearing on the appeal. Plaintiff's Reply alleges the audio recordings of both the Legal Committee and the appeal hearings were not provided as part of the certified AR, though they exist online. Plaintiff was mistaken, and now concedes that any allegations in the Reply at II.B.5. and thereafter are moot concerning audio recordings absent from the AR.

5. Lawsuit Procedural Background

Court notes at OFR 9:19, the action was begun on November 23, 2022. The day after defendant's final reply was due and didn't come, MJ issued her recommendation, which must be some kind of record in terms of work turnaround, making my opposition reply due Thanksgiving Day. The MJ's work is at least poetic justice culminating my "Thanksgiving lawsuit" input after a year. Besides that, Plaintiff must again object to the sentence ending with, ". . . voted to deny plaintiff's appeal" as an error of fact by defendant and here at OFR 9:16-17. The Governing Board did not vote on my Variance appeal, voting instead on a Plan Revision, which involves a different part of the Compact law, despite my admonitions in pre-hearing comments (AR2867) and testimony at the appeal hearing. Therefore, this error by the court appears to be one of mixed law and fact. (Reply 7:15-8:6)

V. Motion to Supplement the Record

While plaintiff suggested that the Administrative Procedures Act or APA (5 U.S.C.) provides controlling case law informative to the judicial review process (Reply 14:fn66), the order's reference to the APA is a bit disturbing at OFR 10:18-19, "When considering an APA case the district court 'reviews the whole record or those parts of it cited by a party. See 5 U.S.C. § 702.'" This is not "an APA case" but rather a case involving judicial review under the Compact, as noted previously by the order. Unless court is reasonably conceding plaintiff's assertions (without comment) there could be an error with the judicial review standards being applied and court should clarify this matter. Nonetheless, the whole record is implicated by the Compact review standards.

On the "presumption of regularity" and "concrete evidence" (OFR 10:20-28) with regard to the AR, defendant's phone and email records are not in defendant's constructive possession as discussed thoroughly in plaintiff's MSAR 7:1-20; an agency

has constructive possession of records if it has the right to control the records, either directly or through another person. Defendant does not possess this, yet certifies the record as complete, with the court implying this whole illegal set-up is wholly proper without comment, despite the public record requirements put forward in the MSAR. (4:18- 7:21)

Here we have court's conclusion (OFR 11:16-20), reciting defendant's CMSJ, and then agreeing with defendant's statement, that matters in the MSAR "are outside of the scope of the court's review in this case and that plaintiff has not identified any bad-faith agency actions to warrant record supplementation. ECF No. 31 at 4-9. The undersigned [MJ] agrees with defendant that the record does not require supplementation is this case. " In this manner, the court is thereby dismissing any findings under *Lands Council v. Powell* (OFR 12:6). Court is silently condoning and supporting illegal acts by defendant with a faulty analysis, if any, of the evidence or facts in the AR, in complete and unwarranted deference to defendant, as is discussed herein and in plaintiff's prior motions. Bad faith action began with the very first written communiqué from defendant to plaintiff, the stay response, which tainted everything that followed with illegally scheduling an appeal hearing in the absence of a Statement of Appeal (SOA), as will be discussed below in VI.C. (p.14) This court finding is without basis in law and a reversible error based on plaintiff's prior motions and what follows.

A. Oath of Office Concern Does Not Demonstrate Bad Faith

The order asserts defendant's own claims concerning oaths of office without addressing the legal requirements for federal appointees cited in plaintiff's FOIA letter, MSAR Exhibit 1. (OFR 11:23-27) To agree with defendant's assertions that TRPA's federal appointees only owe allegiance to the entities they otherwise serve is specious and without basis is law. In the first place, very few BMs are appointed by a federal authority other than TRPA, and so would not otherwise subscribe to the required federal oath in accordance with the legal requirements as stated in MSAR's Exhibit 1. In the second place, certain BMs are appointed as "members at large" and do not serve an appointing power prescribed by the Compact other than TRPA, and are therefore required to subscribe the oath for TRPA (like the others).

The law is the law, and plaintiff's MSAR claims this is of grave importance as a matter of law, for it legally invalidates all that the TRPA does insofar as decisions by presumed traitors lacking proper governmental authority can not be legally binding on the governed, a manifest error of law to allow by the court in its dismissal. None of the individuals referenced in MSAR Exhibit 1 have satisfied their Constitutional obligations or have adhered to 5 U.S. Code § 3332 thereby nullifying, or at a minimum, calling into question the legitimacy of their appointments or positions. Violators shall be removed from office and permanently enjoined from further governmental service. Since none of the appointees referenced have produced a compliant, mandatory oath of office affidavit, it follows that plaintiff has established a *prima facie* case for remedy such as petition for

issuance of a *writ of quo warranto* and the burden of proof then falls on the appointees to prove to otherwise and to produce the affidavits as required by law. *See e.g., Ford v. Leithead-Todd*, 139 Haw. 129, 384 P.3d 905 (Ct. App. 2016); *People ex rel. Lacey v. Robles*, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2d Dist. 2020). Oath failures are currently widespread at all levels of government, including courts. TRPA is a case in point.

Court states the Compact does not contain an oath of office requirement (OFR 12:1-5) but that is irrelevant. As for most agencies, the requirement is not in the organic statute but rather in the APA, to cover all in federal service. *See* ECF 32, 7:22-26. It is a manifest error of law in failing to supplement the AR with this oath deficiency by ignoring all lawbreaking and acts in bad faith. The failure to subscribe to a required oath can only be considered potentially treasonous, "bad faith" in the extreme.

B. The Administrative Record Already Contains Public Comments

The court cites plaintiff's allegation of "bad faith" by defendant failing to publish public comments (OFR 12:7-8), not mentioning the fact that they must be published "contemporaneously with the meeting" as required by law. (MSAR 6:12-13) Court fails to note over 1200 pages of comments in the AR were not published online until many months later, long after the BMs voted and public interest had waned. (MSAR 6:14-24) Court erroneously supports defendant's censoring of public comments to prevent Board consideration. Defendant's action was done in bad faith to deprive plaintiff and others of the civil rights to a fair and unbiased hearing. Here, it was clearly done to prejudice the appeal hearing outcome by limiting the comments presented to those of plaintiff, the Project applicant, and a two other minor comment emails. (MSAR 8:fn4) Defendant has no authority or right to cherry-pick which public comments the Board is presented with, and takes this illicit activity as their illegal duty. It is a manifest error for the court to sanction this subterfuge rather than reproach it.

The order says plaintiff fails to identify a deficiency in the record, and there is nothing to supplement in the AR. (OFR 12:22-23) Plaintiff doesn't agree, and cites the failure to *publish* public comments contemporaneously with the meeting (not just list them in the AR) as information not obtainable from the AR, which court dismisses. If the court is refuting plaintiff's allegations, plaintiff would have the court explain its disposition of defendant's own insertion of extra-record information into the certified AR after the fact concerning emails in the certified AR, without motion for court leave to do so, in light of plaintiff's rebuttal and over plaintiff's strenuous objections. See defendant's opposition to the MSAR and plaintiff's rebuttal. (ECF 32, 8:6-23) Court dismisses the matter without comment, siding with defendant. Plaintiff has no indication the court has refused admission of the unverifiable electronic information, which plaintiff suggests would be a plain and prejudicially-biased error to admit. The implication and inference is the certified AR is deficient or defendant wouldn't have taken such action in the demonstrable disregard for rules it is so prone to, undermining court's assertion.

C. There Is No Concrete Evidence of the Existence of Additional Relevant Documents

Court opines plaintiff has presented "no concrete evidence" of the existence of additional relevant documents and dismisses the MSAR. The MSAR evidence is that defendant has set up "official channels" for email and telephone calls it can't retrieve records from for administrative record purposes. That's the evidence, not hunches and suspicions, but official email defendant has no access to. Why should BM traitors be given the benefit of the doubt that they don't communicate among themselves unbeknownst to defendant's electronic systems? That's why it's just a perfect set-up for criminal activities, and why it's a manifest constitutional error for the court to overlook it. Knowing defendant and BMs, they surely exploit it. If plaintiff has no proof of *specific* documents, how could he ever? The defendant's administrative system is set up to evade review. (MSAR 9) The court has nothing to say as a matter of justice about defendant's mishandling of the public records and deliberate subterfuge with electronic records to deprive plaintiff of a fair and honest hearing. The MSAR is thus summarily denied based on errors of various sorts so the case "proceeds on the merits of the administrative record as filed by the defendant." (OFR 12:24) Plaintiff again objects, to MSAR dismissal, and for leaving the matter hanging as to whether the court erroneously admitted prejudicial extra-record evidence in defendant's Opposition filing (ECF 31), as it may have from the failure to include "as certified" here.

VI. Summary Judgment Analysis

A. Claim 1: "August 5, 2022 Exception Letter"

The court begins the summary judgment analysis citing plaintiff's MSJ at pages 1 and 7. The associated court references to the AR citations in the MSJ at 7 are erroneous upon examination: "ECF No. 28 at 7, citing AR 0738-0473, 0753-0755, 0168." If one examines page 7, those are not plaintiff's citations, none of the above AR numbers appear, and it is unclear what the MJ is referring to with a 265-page "reverse" citation. What plaintiff wrote, with pointed references, was: "I filed the NOA and stay request on August 22, 2022, refuting that the RGR was professionally appropriate, correct or adequate to determine that interference to a ground water table would not occur, as required, at length in the record (e.g., AR0743-AR0747, and later at AR1295-AR1296, AR2865-AR2866, Ms. Carpenter's letter (AR1188-AR1205) and Claim 8, below)." (MSJ 7:18-21). The judge's citations appear to be material errors of some sort, beyond mere clerical errors, and point to a failure to properly examine the AR, leading to errors of fact and lending weight to other error findings demonstrated herein.

The MJ concludes the defendant decision on Claim 1 is "well-supported by the evidence," (OFR 14:8-20) if not the law, for only in a one-sided sense does it seemingly pass judicial review muster, as the court is not examining the specifics of the laws, as in my SOA. Court can avoid technical matters in the evidence if it grants deference and all discretion to defendant, erring in seeing the facts before it concerning bad faith. Plaintiff turns court back to the law, since it failed to examine the rudiments and

whether defendant acted here in a manner contrary to law, as alleged. The gloss-over defendant narrative recited by the court, and defendant's assertions that it did not issue a Variance, do not withstand legal scrutiny (*see* Reply 9: 8-19) and the AR does not demonstrate that the applicable code sections are met as a matter of law, as sufficiently demonstrated in MSJ 14:1-17 and associated AR references therein. Defendant's claimed Code compliance was all roundly refuted and demonstrated as being illegal to approve under non-discretionary, ministerial application and administrative review requirements. (Reply 9:20-10:7) As ignored by defendant in its motions, here court is also ignoring all actions conducted in a manner contrary to law, and erroneously giving defendant discretion it does not possess under a high-level "substantial evidence" finding when the undergirding legal details render that finding untenable and void. There is no basis meeting the requirements of the regulations for the staff approval of the Variance in the AR, as plaintiff has pointed out from the NOA to the present. The "whole of the record" points to this and has been ignored in errors of judicial review, for it is manifestly clear error that sanctions breaking the laws to any degree while stating supporting evidence overcomes.

The section on Claim 1 concludes with reciting Art(VI(j)(5) requirements concerning "independent judgment" on the evidence noting, "the scope of review shall extend only to whether there was prejudicial abuse of discretion." Plaintiff discussed the two-pronged standard on p. 1, above, and further notes the judicial review standard must be coupled with and informed by the Compact's mandate to strictly follow the Compact law (Art.(c)), " The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provision of this compact." Noting the use of "shall" and that the provision does not allow that defendant can adopt or interpret its self-enacted regulations in a manner inconsistent with the Compact, the court shall not grant defendant discretion it does not possess to pass and administer laws that violate the statute, or to violate the regulations enacted, without committing a clear error of judicial activism and overreach contrary to what Congress clearly intended. Yet that is what court has done based on "ample evidence in the record" to support one prong of the test while ignoring the facts that the whole of the permitting and appeal process is fatally tainted by defendant's illegal regulations, and faulty administration, with ample evidence in the record for that. The order's motion for summary judgment on this claim fails as a matter of law.

B. Claim 2: "Late Response for Stay Request"

Court discusses the day-late determination in response to the stay request filed with the NOA, writing, "First, the court agrees with defendant's assertion that this claim is moot because there is no available remedy with respect to TRPA's delayed response." (OFR 15:2-3) The gloss echoing defendant continues, ". . . there is no further relief for the court to order." (OFR 15:4) Plaintiff would say first that ROP 11.3 grants no discretion not to make a stay determination within two days, which must be

communicated to be of any validity unless a denial by inaction is intended. Second, plaintiff notes the fact that the response came on day three is not disputed (AR1182), and is therefore a single-day violation of the requirement. Third, this section calls into question whether the Reply was adjudged by the court in its entirety, thereby depriving plaintiff of a fair tribunal, as there is no mention of any of plaintiff's counterarguments or claims of violation and trespass of constitutionally protected interests under the ROP (Reply 7:10-14), another manifest constitutional error.

Fourth, court's finding of mootness is plainly erroneous, and ignores the fact that relief for *all* of the violations claimed in plaintiff's original Complaint and thereafter rests entirely on Art(VI)(l), "Any person who violates any provision of this compact or of any ordinance or regulation of the agency or of any condition of approval imposed by the agency is subject to a civil penalty not to exceed $5,000 ... per day, for each day on which such a violation persists…" Here we have a willful violation by the defendant, for which plaintiff is still alleging bad faith—not only for being late, but for its illegal contents scheduling the hearing on September 28, 2022, in violation of ROP 11. Plaintiff would accept that $5,000 is an adequate penalty, sufficient to deter such lateness in the future. The claim of mootness on the basis that no relief is available is a plain error that does not withstand legal scrutiny and plaintiff's claim must not be dismissed for lack of jurisdiction (OFR 15:6-7). If court does not believe civil liability is an available remedy, it must refute plaintiff's arguments and has not. (MSJ 17:10-19:11) Plaintiff is a person. TRPA is a person. Here the court is attempting to deprive plaintiff's right to equal treatment under the law (42 U.S.C. § 1985), namely, the right to obtain relief in the same manner as defendant does when it prosecutes violators, and thus dismissing this complaint on the stated bases is a manifest constitutional error that necessarily trespasses guaranteed civil rights.

Court errs further by not acknowledging the arguments put forward in the Reply at 13:10-16:11 identifying constitutionally protected interests created by the defendant's ROP, thus establishing factual constitutional violations. Court evidently did not fully consider the Reply before issuing the order, with a presentation clearly prejudicially biased to dismiss the case. Court repeats the error of claiming "plaintiff's appeal was heard and acted on," when as a matter of law plaintiff has explained *ad nauseam* the action taken by required BM vote was on a major Plan Revision approval, and had no legal validity to begin with under illegal regulations. (MSJ 16:12-24, Reply 2:16-25) The court goes on, without basis, to excuse the violation in plain error, with a fraudulent claim of "substantial compliance"—not with meeting the determination requirement in two days, but only for the elements of the stay determination that are within defendant's discretion, so-called interest balancing. (OFR 15:16-17)

C. Claim 3: "Advancement of the Appeal Hearing Date"

The contents of the stay determination are discussed (OFR 15:19) as court repeats defendant's blithe unsupported assertion

from their CMSJ, that "as explained above, there is no constitutional right arising from TRPA's rules." (OFR 15:22) That notion was fully debunked in the Reply, as noted above, so this review begins in failure mode like the prior claim review. The order continues, stating the ROP puts no limit on defendant's appeal hearing scheduling, but does "impose certain deadlines on the appellant." This ridiculous claim was not addressed fully in the Reply only due to the limitations of space, and comes out of defendant's twisted view that the TRPA regulations are binding on the public and merely serve as advisory guidelines for what defendant may do in its illicit, unbridled "discretion," ignoring its charge under Art(I)(c). This statement evinced the minds behind the tyrant to plaintiff, since that is defendant's practice in actual fact.

Plaintiff completed additional analysis of ROP 11 in response to the order and will again summarize and extend the findings and allegations ignored by court. There never was any legal basis in the Compact for ED or Hearings Officer (HO) approval of projects or variances, and therefore no basis for appeals. (ROP 11.1) The whole section 11 is invalid, and set up to deprive the public of protected civil rights and should be stricken from the regulations. The ED or HO acts beyond statutory authority when taking action on projects in lieu of Board action under illegal delegations of project and variance approvals defendant illegally made up. Nevertheless, defendant proceeded to violate its own illegal rules, as follows.

ROP 11.2 refers to notice of appeal (NOA) filing requirements, SOA filing requirements, and scheduling requirements for being on the "next Governing Board agenda," including SOA filing before the 15th of the previous month. Importantly, the filing of the NOA and SOA puts the scheduling for the appeal hearing in the appellant's hands. For defendant's September 28, 2022 scheduling requirement to comply with 11.2 the SOA would have to have been filed by August 15, 2022, a week before the NOA filing. Thus, defendant fatally erred in interpreting its scheduling rules in order to hold an appeal hearing timely for its permittee, violating applicable regulatory requirements, nor does it have any discretion to violate the rules it enacted for itself. (Art(I)(c)) The SOA was filed before September 15, 2022, under duress, as defendant had communicated its intention to schedule the appeal at the September 28, 2022 meeting with repeated, unsupported, assertions of discretionary authority, as in its CMSJ, thereby depriving the due process rights of the appellants.

ROP 11.3 concerns stay requirements, including the two-day determination I've previously discussed, something an appellant "may request" and the Chair may issue following a determination. There is a reference to holding a hearing on the appeal at its "next regular meeting." To be consistent with 11.2's requirement to publish the appeal in the "next Governing Board agenda" the requirement to file the SOA on or before the 15th of the previous month must be recognized, with no other reference to scheduling requirements in 11.3. Scheduling in any event depends on 11.2 requirements, and defendant erred fatally in scheduling the appeal hearing to its "next regular meeting," without any regard for 11.2 due process and scheduling requirements

(as reinforced by 11.4, below, including the "previous month" requirement). There is thus consistency with sections 11.2 and 11.4 which defendant and the court doubly ignored. Appeal scheduling requirements are completely independent of any stay issued, and it is an error of law to assert otherwise, as defendant's General Counsel did repeatedly, and as court does in support. The AR contains the record of emails between plaintiff and defendant's General Counsel demonstrating the pre-SOA, pre-appeal contentions of defendant under ROP 11.3, and duress plaintiff was arbitrarily compelled into, under strenuous objections: AR1182, AR1185-AR1205, AR1248, AR1251, AR1258, AR1259, AR1264-1267 and AR1280.

Review procedures for (illegal) decisions by the ED are in ROP 11.5, and most importantly limit appeal arguments and bases, repeating *verbatim* a sentence in 11.4. By rushing the appeal hearing from November 16 to September 28, 2022, defendant deprived plaintiff of the time needed to fully complete the SOA, and the time needed to prepare for the hearings before the Legal Review Committee and the Governing Board. Rather, critical time to prepare under the ROP's contractually-guaranteed schedule was spent in time wasted arguing against defendant's blatant rule-breaking and pushing back against a schedule *imposed* by defendant, first, to file "any additional information"(AR1182) on September 2, 2022 (which plaintiff refused), and then to file the SOA by September 8, 2022, with no authority or basis in law to do so!

Given the required time to file the SOA, plaintiff would have filed it after September 15, 2022, which would have put the appeal hearing on November 16, 2022. Thus, plaintiff was deprived of something on the order of ten days to prepare plaintiff's SOA for filing, and an additional 56 days between September 12 (plaintiff's SOA filing date) and November 16, 2022, to prepare for the appeal hearing. To add to plaintiff's burdens in representing the co-appellants, Defendant issued its staff report for the appeal for comment one week prior to the meeting, on August 17, 2022. The appellant then has seven days to reply to the staff report (see 11.8 below) or be otherwise limited to the arguments and bases for appeal as stated in 11.5. Thus, the case for appeal was impossible to make fully in the time available, greatly trampling plaintiff's civil rights and tainting subsequent litigation rights by severely limiting time for argument. Plaintiff sent comments on the TRPA staff report for the appeal on September 27, 2022 (AR1989-1994), in the midst of preparing for the above-cited hearings, preparation of presentations and slides for the hearings, and managing communicating with plaintiff's associates, monitoring site activity, preparing exhibits such as plaintiff's impervious coverage calculations and many other things. Within the limited time, introducing information to better explain the coverage analysis, introduce the *Daubert* standard, analyze the law, *etc*., was not possible and deprived plaintiff of civil rights guaranteed under the regulations, illegal as they are.

It is patently unjust that defendant prejudicially abused discretion it does not possess in misapplying its own rules to compress the time needed for the due process requirements in ROP 11 to unfold. Instead, plaintiff was given an illegal and

arbitrary timeline, so defendant could illegally uphold its illegal project approval to advance project construction fully in 2022. All TRPA's Chair had to do was determine a stay would not be issued and let the appeal hearing process unfold. There was never any basis for a September 2022 appeal hearing as plaintiff was fully aware in lodging the appeal, nor any knowledge on plaintiff's part that defendant would attempt these illegal actions in bad faith—prior to receiving the information with the Chair's determination on the stay plaintiff received on August 25—when every day then became critical under the compressed schedule and caused great hardship in presenting plaintiff's case for the appeal. There was no "harmless error" in depriving plaintiff's due process rights as defendant claims in it narrow review of the day-late response containing the illegal scheduling requirements, which the court is supporting without justification; the agency simply has no discretion to violate the ministerial requirements, regardless of whether its staff supposes its errors are harmless.

"11.6.2. If the Board determines to hear the appeal, it may take action to modify or revoke the approval by the same affirmative vote as would have been required to approve the matter before the Board. Failure to take such action shall be deemed a denial of the appeal." Plaintiff commented that the defendant failed to act on plaintiff's appeal of a variance by the vote required, instead substituting the vote required for a project approval. (MSJ 16:12-19, Reply 8:1-6).Therefore, the Board did not in fact act on plaintiff's appeal on the issuance of the variance. In hindsight, it was all a misguided sham, and reasonably may have turned out differently had defendant followed the rules—and not acted prejudicially in bad faith to deprive our civil rights from day three. In any case, the Variance was denied by the operation of law, setting the stage for this litigation.

"Prior to a hearing on an appeal, the Executive Director shall prepare a staff position paper on the appeal. The staff position paper and the written statement of appeal shall be mailed to the appellant and any real party-in-interest and included in the Board packet at least seven calendar days before the Board meeting that the appeal is scheduled to be heard." (ROP 11.8) The staff position paper was only sent by limited electronic mailing in this case, which the above regulations do not support. It was not mailed to any other real-parties-in interest to plaintiff's knowledge based on the AR, which lacks any evidence of legal public noticing (Reply 8:15-20) such as to any nearby property owners, including a multi-unit condominium with private dwelling units within 300 feet of the project site. This public noticing requirement was unmet, depriving all such parties of their civil rights without them knowing. The court has committed manifest constitutional errors of law by excusing all such civil rights violations and there is no entitlement to summary judgment on Claim 3 for defendant as the court states.

D. Claim 4: "Requirements for a Complete Project Application"

Claim 4 concerns unmet, non-discretionary application requirements for a "major" project revision per fee regulations, contrary to statements in OFR 16:5-16. (*See* AR1294) The court opines that these are discretionary requirements and that a

"duplicative submission was not warranted." Plaintiff disagrees that the required elements of ROP 5.2 for a complete application are discretionary, though never implying the elements must be "duplicative" as to content. The requirement was to provide an application appropriate to the Project as revised, and this defendant did not require prior to its staff approval of the Variance. (Reply 5:3-5) This error of law the order supports at OFR16:18, citing defendant's assertion that this claim constitutes a "third-party cause of action" outside the court's scope of review. Plaintiff refutes the assertion, with the defendant being in violation of ROP 2.2.1 for approving a Variance in the absence of a complete application. Thus, this matter is within the scope of review as addressed herein and contrary to court findings at OFR 16:19-20. Defendant is not entitled to summary judgment on this claim in light of the errors of fact and law, above.

E. Claim 5: "Application Signer in Perjury"

The order cites a claim (16:23) that the application was unsigned which plaintiff ceded in the MSJ (10:8-9), and cites the arguments against Claim 5 that fail for Claim 4 concerning the perjured, incomplete application, and this argument fails for the reasons stated above. The order restates defendant's admonition that "a challenge to the adequacy of the initial application is outside the proper scope of the court's review." (16:26-28) That is precisely why the regulations (ROP 5.2) require a complete project application that addresses potentially significant impacts and requirements, from the project as revised, to preserve important environmental obligations and civil rights to public participation concerning those obligations. This is where defendant failed, here supported by court. The AR evidence that the application was perjured is that it was incomplete in important respects, which matters mainly for the reasons stated above—to ensure important civil rights under the project review processes. Defendant is therefore not entitled to summary judgment on Claim 5.

F. Claim 6: "Incomplete Application: Missing Initial Environmental Checklist"

Claim 6 pertains to the missing Initial Environmental Checklist (IEC) required of all applicants for a complete application. As with Claim 4 there is a false claim plaintiff is "creating a private right of action" from defendant's ROP to "challenge the contents of an application." Again, this in error because plaintiff isn't challenging the "contents" of any application element, only that required elements were absent entirely, elements which are non-discretionary under ROP 5.2 when a project application is triggered. The order's case law cited is inapplicable (OFR 17:22-25) because there is no evidence of environmental review in the AR, as discussed at AR0734-AR0736, MSJ 10:17-11:13, and Reply 5:6-7:9. Defendant violated ROP 5.2 by not requiring an IEC and other missing elements. (AR2869) It gave preferred treatment for the applicant rather than equal treatment under the laws. Approval of the Variance (not the "Plan Revision") on the basis of no IEC was a prejudicial abuse of discretion and the entitlement to summary judgment for the defendant recommended by the court fails for Claim 6 for the same basis as for Claim 4.

G. Claim 7: "No Environmental Review Determination"

The purpose of Claim 7 was to document the absence of environmental review by staff concerning the Variance, as supported by the AR. (MSJ 10:7-11:13) The staff approval of the Variance (not the "Plan Revision") was therefore a prejudicial abuse of discretion and the entitlement to summary judgment for the defendant recommended by the court (OFR 18:12) fails for this claim for the same reasons as for Claims 4 and 6.

H. Claim 8: "Incomplete Application: Missing Necessary Reports"

Claim 8 pertains to missing "necessary" reports for the Variance application for the Plan Revision, with a focus on the revised geotechnical report. (OFR 18:6-9) With the court's rejection of *Daubert* as a tool in this case, plaintiff points to additional non-discretionary reports not provided at MSJ 10:4-7, and it is these violations that deprive defendant of entitlement to summary judgment on this claim solely on the basis of "substantial evidence" (OFR 18:11), with the court erring by ignoring violations of law and the absence of evidence of compliance.

I. Claim 9: "Prohibition of Excavation Interference with Ground Water Table"

Plaintiff's SOA provided a detailed analysis for Claim 9 (AR1313-AR1319) to support that approving a variance to the regulations was in violation of applicable requirements, as did plaintiff's MSJ (14:1-17) and NOA (AR0737-AR0746). As for Claim 1, the order cites a one-pronged judicial review standard to dismiss, without comment, defendant's violations of law solely on the basis of "substantial evidence" (OFR 18:11), with the court erring by ignoring violations of law. The defendant is not entitled to summary judgment on this claim.

J. Claim 10: "Conflict of Interest Violations"

With regard to Claim 10, court cites defendant's explanation from the CMSJ with the issue focused on the meaning of "employee" stating of ROP 8.4, "this provision is designed to prevent employees from seeking supplemental employment or compensation," so defendant," retained a third-party soils consultant (not as plaintiff asserts, a 'subordinate employee')…" (OFR18:26-19:2) My World Book Dictionary (1983, p. 1782) indicates "retain" means "3. To employ by payment of a fee . . . by payment of a retainer," and the first meaning of "retainer" is "a person who serves someone of rank; vassal; attendant; follower." This supports plaintiff's claim that the soil consultant is an "employee" of the defendant, and subordinate to it in accordance with common understandings and therefore ROP 8.4 is applicable. Plaintiff stands on the MSAR's analysis and summary, in particular the finding that defendant does not have any person on its staff competent to carry out its ground water protection regulations. (MSAR 13:23-14:8) Court errs in claiming the employee was not conflicted, and defendant is not entitled to summary judgment on this claim.

K. Claim 11: "Impervious Coverage In Excess of Limitations"

Court will NOT exercise independent judgment on the coverage evidence, despite any discretion under case law or "bad faith" it refuses to see, citing defendant analyses debunked in the MSJ and MSAR. The court finds, "Regardless…the court is required to defer to TRPA's calculations." (OFR 19:18-19) There is court discretion under the circumstances, and the court is perpetuating defendant's coverage errors with an error of law by citing that discretion, however limited, is unavailable to the court in light of the whole record. (Reply 11:16-12:19) Court here stands on maintaining strictest compliance with a review standard, erring by contrast with all defendant's violations of legal requirements court has *completely* ignored under the loosest of interpretations, as discussed thus far herein. Thus, court is cherry-picking which laws to follow and how, just as does the defendant, in an arbitrary and capricious denial of justice. Defendant is not entitled to summary judgment on this claim.

L. Claim 12: "Illegal Appeal Hearing Voting Procedure"

Court dismisses Claim 12 and the erroneous voting procedure as a harmless error because the outcome wouldn't have changed. (OFR 20:1) True, the outcome was predetermined under *any* voting procedure. This case took some extraordinary turns in the final analysis, something likely unusual in most administrative law cases, with plaintiff's disclosure that defendant has operated under invalid regulations in its Code of Ordinances and Rules of Procedure, since 1998 as it turns out, to excuse the Governing Board from voting on the vast majority of projects and variance applications before the agency in a manner contrary to law. (Reply 3:5-20) This raises Constitutional issues with regard to civil rights violations because defendant has done indirectly what the U.S. Congress and the two states could not do directly, by its changing the statutory requirements with faulty regulatory rules that deprive the public of its protected rights to due process and public participation in agency decision-making. (*Henderson v. Mayor of the City of New York*) .The vote on plaintiff's appeal, however erroneous in process (AR2867), was a foregone conclusion as plaintiff's Reply and other motions makes plain. The illegal voting led to discovery of all the illegal regulations the court is looking past throughout the order in manifest constitutional error, without a word that defendant has acted contrary to law in any respect. (Reply 1-2) The defendant is not entitled to summary judgment on Claim 12.

VII. Conclusion

Court has in essence said the quiet part out loud. It believes defendant may facilitate rampant development in violation of its mandate to protect the Tahoe region, violate its own regulations and the Compact with impunity, violate the civil rights of the people, ignore science and public safety and health data, and that courts can't hold it accountable. In defendant's wildest fantasy, nearly nobody has interest or standing to sue or is harmed by its procedural due process violations. Court makes precedent establishing that defendant is accountable to nobody, even if it harms federally endangered species, introduces or micoplastic

pollutants into outstanding federal waters, or irradiates people, natural waters, fauna and flora with damaging effects. Defendant won't take any look whatsoever, let alone a 'hard look,' at the multiple adverse consequences and viable alternatives to its projects, with court assenting.

To these precedents add court's recommended consent to allow, without a contrary word, that defendant may change the laws set forth by the U.S. Congress and the state legislatures of California and Nevada, that defendant may further ignore even those inapplicable illegal requirements under presumed discretion that does not exist to violate the law, with court denying for defendant that any violation of law or "bad faith" has occurred without specific reference to mountains of evidence. This order abets defendant to destroy the purity of the enormous and world-class water resource that is Lake Tahoe for healthful drinking water purposes, to destroy the natural environment of Lake Tahoe with toxic man-made chemicals and microwaves, and to degrade Lake Tahoe for all other beneficial uses of water protected under the California Water Code in the absence of currently prohibitively-expensive treatment without a scintilla of precaution, a program the MJ is in full support of. I therefore pray for court's reversal of the order, findings and recommendations by the MJ, and to order summary judgment for plaintiff. Court must assist to restore Lake Tahoe by restoring the rule of law.

Alan Miller DATED: November 22, 2023

Alan Miller, *Plaintiff, in propria persona*

P. O. Box 7526, South Lake Tahoe CA 96158

Syngineer1@gmail.com

Exhibit 1: Court Holidays, District Court for Eastern District of California

2023 Federal Holidays

Monday, January 2	New Year's Day
Monday, January 16	Martin Luther King, Jr.'s Birthday
Monday, February 20*	George Washington's Birthday
Monday, May 29	Memorial Day
Monday, June 19	Juneteenth National Independence Day
Tuesday, July 4	Independence Day
Monday, September 4	Labor Day
Monday, October 9	Columbus Day
Friday, November 10	Veterans Day (Observed)
Thursday, November 23	Thanksgiving Day
Monday, December 25	Christmas Day

John L. Marshall (#145570)

General Counsel

Tahoe Regional Planning Agency

P.O. Box 5310

Stateline NV 89449-5310

Executed on: November 22, 2023 Signature: 

Alan Miller

Plaintiff, in propria persona

From: Al Miller <syngineer1@gmail.com>
Sent: 2/27/2024 1:08:17 PM
To: Public Comment <PublicComment@trpa.gov>; John Marshall <jmarshall@trpa.gov>; Katherine Huston <khuston@trpa.gov>; Julie Regan <jregan@trpa.gov>; Cindy.Gustafson <cindygustafson@placer.ca.gov>; TRPA <trpa@trpa.gov>
Subject: Microplastics - Public Interest Comments, Feb 28, 2024 TRPA Mtg
Attachments: Preliminary Photo Report - Marinas.pdf

Please provide these comments for public information in connection with Item XI of the TRPA Governing Board agenda for the meeting of February 28, 2024:

Microplastics in Lake Tahoe from Shorezone Structures

Interested Members of the Public,

I am writing concerning microplastics (MPs) to follow up my comments congratulating Mr. Bass, the Mayor of South Lake Tahoe and my sole elected representative on the TRPA Board, for his comments at the January 2024 Governing Board meeting. I again express my gratitude to Mayor Bass who spoke of his concerns with a spill of microplastic beads from a styrofoam dock in early January 2024 on the Lake Tahoe shoreline of Incline Village, where volunteers conducted a cleanup to the extent feasible (see around 3 hr 8 min into the TRPA video of the meeting). Mayor Bass further requested the TRPA investigate for potential sources of MPs from such shorezone features by contacting each owner of Lake Tahoe shoreline property by letter to request pertinent information related to MPs, to determine their presence, methods to prevent similar MP releases, and provide for "amortized" replacements. I thanked Mayor Bass because this is a needed, significant first step to begin to understand and address a significant and growing MP problem at Lake Tahoe, a problem I have been discussing with TRPA since September 2022. To date, no one has refuted the information I have put in the public record; they keep SILENT *because* my info is irrefutable.

Besides the Obvious "Spill" of MP Beads . . .

I also explained in testimony that degradable plastics, including styrofoam (polystyrene), comprise many of the floating-dock ballasts, in some cases covered by a thin plastic coating, easily compromised. Many other plastics than styrofoam are also present and disintegrating in the shorezone. All are potential sources of MPs in Lake Tahoe. My prior words have had no discernible effect, despite "new science" in July 2023 sounding the MP alarm at Lake Tahoe, to which TRPA remains deaf (Mayor Bass excluded). Chair Gustafson responded, "Staff please look into that," in response to the letter request of Mr. Bass and quickly moved to other discussions. It's been a month. What has staff done to report to the Mayor and the others, the public such as myself? The public deserves to know this hasn't been shelved by the staff under directives from the Chair and Executive Director or others.

Massive Efforts Needed

My Letter to the Editor in the Tahoe Mountain News (November 2023) stated the following, in part: "… TRPA/Lahontan have known since early 2022 that fake-pine wireless macrotowers shed toxic MPs in the tons annually on the winds and to the waters, and dismissed water quality concerns with a 'junk science' report from Verizon. Monopines are clad with the plastics (PVC) also used for marinas and piers. Massive 'shorezone' structures approved by multiple agencies are breaking into MPs accumulating in Lake Tahoe. A ready solution involves replacing deteriorating plastic structures in the shorezone using only wood, stone and metal. Agency 'approvers' should fund replacements. People aren't at fault for building what was allowed and I humbly ask their benevolence to prevent more harm or it's 'game over' for clarity and water quality and everyone loses. Like sewering the basin, it will take a massive effort and years to reverse if begun now."

Information on Plastic Shorezone Structures and Faux-Pine Macrotowers is Available Now

Prior to his comments about MPs Mayor Bass spoke of concerns he had heard from constituents about TRPA's approach to public records administration in some instances where TRPA records were not readily made available to the public. I did not communicate to Mr. Bass my own concerns with same prior to the meeting, or at it—at 3 hr 13 min into the video—due to time limits. What I want Mayor Bass and the public to know is **that TRPA has already collected and reviewed the information needed from its records to contact each shorezone property owner for the desired information**, as he requested. This has been done pursuant to a request for public records I included in Public Interest Comments for the TRPA Board meeting in October 2023, as follows:

> **"Request for Public Records**
>
> I expect my public servants to know and abide fully by the statutes (not the illegal Rules of Procedure) it is bound by. Pursuant to applicable law, TRPA has 10 days to respond to me concerning the following public records in electronic format:
>
> 1. A listing or document for of every pier or other shoreline structure application received by TRPA since October 1, 2022, proposing use of plastic decking and/or painted metal; its unique TRPA project identifying number; the Assessor's Parcel Number(s) of the project, and the date of TRPA project approval, if any.
>
> 2. A historic listing or document with an inventory of the total number of projects approved by TRPA in the shorezone of Lake Tahoe in which plastic decking was authorized; the unique TRPA project identifying number; the Assessor's Parcel Number(s) of the project, and the date of TRPA project approval, if any. I will accept a reasonable timeline of 30 days for TRPA to produce this historic information.
>
> 3. A listing or document for every wireless monopine macrotower application received by TRPA since January 1, 2015, its unique TRPA project identifying number; the Assessor's Parcel Number(s) of the project, and the date of TRPA project approval, if any.
>
> In some cases the requested information may be available in a single approval document, and that is acceptable. If TRPA attempts to deny me these public records, or proposes to charge me for the information contrary to statute, we may tangle over that in court while the information is obtained by other means. Send the information to syngineer1@gmail.com."

TRPA staff contacted me by email to say the info was being compiled and in November informed me the information was available, at a cost of $120. This was for the stated "actual cost of compiling the request" but which in fact consists of costs attributable to 2 hours of paralegal review under TRPA's Rules of Procedure invoking fees and the federal Freedom of Information Act. I assert these review charges are an attempt to defraud me under the California Public Records Act, the more-stringent State law pertaining to public access to records TRPA is bound by under the TRPA Compact.

From my long career as a State of California civil servant, I do not recall charging the public for our internal *legal reviews* of public record requests—which generally *were* conducted before releasing information. We disclosed any "privileged" information that was withheld, and the basis for withholding it, and did not charge for this review/redaction. Further, I have requested this shorezone structure information from TRPA solely IN THE PUBLIC INTEREST, with court precedents that support waiving such fees even if FOIA were applicable. TRPA is simply abusing the law by charging these fees to delay discovery and action on walking back the gargantuan approvals of plastics it has granted in the shorezone, together with multiple other agencies.

I will give TRPA another opportunity to do the right thing: follow the law, and forward me the information without cost. I have said, as did Mayor Bass, this is information the TRPA should be gathering on its own initiative, not assessing me fees to review. I urge you to send the public records to me without further cost or delay and

to begin to prepare that letter to shorezone owners IN THE PUBLIC FORUM, with public review and involvement opportunities. I want to make sure TRPA won't fall short in your efforts with this letter and miss the opportunity to save Lake Tahoe from MPs before the contamination goes any farther.

Against TRPA Fee Rule Charges for the Public Records Requested

To underscore these points on public records before moving on, I quote an excerpt from pp. 7-8 of my Motion to Supplement the Administrative Record in my lawsuit *Miller v. TRPA* (decision pending). This is what is before the federal District Court, Sacramento:

"… in response to FOIA requests for which the TRPA charges exorbitant 'professional review' fees which are contrary to law. Reference my reply from Counselor Marshall in response to a recent FOIA request I made, indicating bogus fees may be charged at rates up to $113 per hour, at the sole discretion of the Executive Director (EXHIBIT 4), which is improper, arbitrary, and
capricious. The Compact Art. III(i), requires that,

> [e]very plan, ordinance and other record of the agency which is of such nature as to constitute a public record under the law of either the State of California or the State of Nevada shall be open to inspection and copying during regular office hours.

The statute clearly requires that the public be readily provided with information in the public record, in the age prior to the internet. This is consistent with adopting the open meeting and publicrecord laws of CA and Nevada. However, TRPA adopted a rule of procedure that is inconsistent with the requirements of CA and Nevada public records acts. It instead purports to invoke the federal FOIA of 1966 (5 U.S.C. § 552), but does not comply with most of the Act including requirements to publish in the Federal Register in accordance with the rest of the Administrative Procedure Act (APA) (5 U.S.C. §§ 551–559). Pursuant to the TRPA Code of Ordinances – Rules of Procedure § 15.3.1, 'In responding to public records requests, TRPA shall adhere to the policies outlined in the Federal Freedom ofInformation Act (FOIA) (5 U.S.C. § 552), including exemptions and judicial interpretations.' TRPA simply cherry-picks portions of the federal FOIA for the purpose of allowing it to charge for 'document search and duplication' in violation of the state public records law directly specified in the Compact. FOIA subdivision (III) for non-commercial public records requests limits fees to reasonable standard charges for document search and duplication. However, TRPA charges professional review fees which are even inconsistent with FOIA. TRPA adopted FOIA as a pre-textual ruse to violate and ignore state laws it is bound by under the Compact. TRPA must comply fully with FOIA within the framework of the APA, abandon its use in favor of the CA and Nevada requirements, or fully harmonize all applicable laws, and the court should so order in its discretion.

Under CA and Nevada law, there is generally no cost to obtain public records maintained in an electronic format. CA Public Records Act (CPRA) requires agencies to 'make the information available in any electronic format in which it holds the information' (CA Gov. Code § 7922.570(b)(1)). Moreover, '[t]he cost of duplication of an electronic record … shall be limited to the direct cost of producing a copy of a record in an electronic format' (CA Gov. Code § 7922.575(a)). The 'direct cost' generally does not include search and retrieval time (*North County Parents Organization v. Department of Education*, 23 Cal. App. 4th 144, 146 (1994)). Nevada likewise restricts fees to the direct cost of duplication (NRS §§239.005 & 239.052). Neither state allows local agencies to charge for time and labor."

A New Request For Public Records re: Plastic Structures for AIS Control

In 2022 I was surprised to see 17 acres of heavy-duty plastic sheeting, most likely high- or low-density polyethylene, installed on the sensitive steambeds of Taylor Creek (Tallac Point) and Tallac Creek (Baldwin Beach) adjacent Lake Tahoe by the USFS-LTBMU. This followed approval by TRPA, a major project for controlling aquatic invasive species (AIS) of plants— much-touted on TRPA's website, in the regional press, on the USFS website, even in the annual report presented at this February TRPA meeting. I combed the websites and links within in a vain effort to uncover any actual planning or decision documents, after a considerable search. Everything was either general reports or press releases. Nowhere could I find a Project identifying number: without that "ERSP_____" or a parcel number, the TRPA project database is essentially USELESS for searches. Likewise all the USFS document links were moved/broken and unavailable for this *current project*, for which the plastic sheeting remains in place.

Since each sheet has two sides, I wanted to see what type of planning and analysis was done by the TRPA and USFS before putting 34 acres of plastic surface into the aquatic environment, to be eroded by the "universal solvent" (water) before they each made findings of "no significant effect." My guess is that there will be nothing of any substance. I studied these plastic liners 35 years ago and thereafter in practice when production and use in landfills and waste ponds was burgeoning. They are durable and chemically resistant as plastic goes, generally placed underground, but are sources of MPs from cutting, erosion, deterioration, abrasion—and they are all permeable to water to some degree, both through the liner material by molecular diffusion and through leaks and tears that develop. For this one project alone, 17 acres of plastics are exposed to the bed, where abrasion against sand and soil occur due to thermal expansion and contraction at differential rates, and 17 acres of surface is exposed to sunlight and UV exposure, and abrasion from water, snow and ice.

Was ANY consideration given or analysis applied to microplastic discharges from the liner-mats into these highly-sensitive Stream Environment Zones and Lake Tahoe? I seriously doubt that I will find a single word in any document about MPs. TRPA HAS NO POLICY FOR PLASTICS CONTROL TO FOLLOW. No expertise. Does it just not matter in trading off AIS control by this means for water quality protection? How long will the mats remain to deteriorate? How will they be removed without discharging additional MPs? What will be done with them then? Mats are expensive; a "sunk" cost once purchased. I suspect there are plans to reuse these mats for other projects rather than discard them, as has been done with some 5 acres of mats (10 acres of surface) in the Tahoe Keys, for years. Is that a good idea at Lake Tahoe? What is the science supporting that? How does that use square with the MP problems now identified, but still largely unknown as to all sources and extent, in Lake Tahoe? Not asking questions like these is how the Tahoe Regional Plastics Agency earns its moniker routinely, with malice to me.

I found no answers online, so I called TRPA to get the project number. The following day I spoke to Bridget Cornell, senior staff. She said she was unaware of the Project and would have to research the matter and call me back to fulfill my simple request for an ERSP No. or Parcel Number. Fine. But I have received no call back or information from TRPA since 2/15, now approaching two weeks, despite Director Regan's public relations to the contrary in the press. As Peggy Bourland wrote in the Tahoe Mountain News this month, Regan should resign, for many reasons. **Therefore, TRPA shall consider this my written Public Records Act request for the applicable TRPA Project identifying number and the associated TRPA project planning and approval documents for the Taylor Creek/Tallac Creek AIS Control Project.** TRPA has my contact information.

Initial Policy Recommendations for Plastics in the Shorezone

Refocusing on the plastics in the shorezone, my testimony in January 2024 referenced policy recommendations from my proposed (June 2023) lawsuit settlement offer, reproduced in Public Interest Comments for the January TRPA Agenda/meeting of the Governing Board. An excerpt follows:

"The alternative as I see it is for TRPA to maintain a defense of its non-scientific, non-analytical ways and ignore and worsen the problem until Lake Tahoe and its waters are irreversibly polluted with
microplastics as a result of missing reasonably foreseeable impacts and consequences, lack of planning, lack of regulation, and ignoring public concerns, as expressed here and in my prior testimony. There are microplastic wastes not amenable to control, dust in the air, tire dust, etc. Such is not the case at Lake Tahoe with the shorezone structures. Wood, rock and metal are viable alternatives. If you think the plastic docks don't break down and discharge wastes, see the pictures in my preliminary report, including many floating microplastics, which will destroy water clarity over time. Hydraulic residence time is an engineering concept: With Lake Tahoe's 600-year average hydraulic residence time for water, pollutants likewise will tend to accumulate rather than dissipate. Plastics include floaters and sinkers; the former will affect clarity. I now find plastic litter now every time I walk the beaches near the Tahoe Keys, where I frequent, including floating and washed-up miniature styrofoam "popcorn" plastics from deteriorating docks, broken ballasts, and the like. I know there is more plastic I can't see. The water quality shit-show that is the Tahoe Keys is only the worst problem area, and serves as a warning, for what befalls the Keys spreads to the Lake. Like this gross example of unintended, unevaluated impacts, increased impacts from other shoreline structures and marinas I've reviewed, including all those approved under TRPA "Marina Master Plans," will surely worsen with time.

I propose for settlement discussions:

A. An immediate moratorium on the placement of new plastic materials in the shorezone, over Lake Tahoe waters, and in SEZs, taking a proactive approach to a “new” issue.

B. A regulatory PLAN for phasing out and removing existing plastics from the environments in A., such that only natural materials are used for structures in these areas, materials that will not produce toxic and “forever” plastic wastes in the water environment.

C. Abatement and removal (required or voluntary) of deteriorating plastic shoreline structures. Criteria as a basis for removal of deteriorating plastics (age, type, condition, other), and incentives for removal. (Water Board assistance may be needed or desirable.)

D. Water testing for plastics, directing funds for same, specifically in potential PVC “hotspots,” which comprise many of the shoreline structures, so that monitoring may determine the current state of contamination, as well as improvements from abatement and removal, and threats from sediment disturbances.

E. Regulations prohibiting the further use of plastics for structures in A., or that may otherwise affect water quality, including industry wastes from monopine towers and other bulk sources of degradable plastics, which should be banned.”

I stand by these policy suggestions as a means to begin a massive project needed to Keep Tahoe Blue. Lake Tahoe is in deep distress even without the MPs issue. TRPA is lost in thinking that maintaining the status quo for decades is “restoring Lake Tahoe.” The researchers would prefer to study the MP problem, with agency funding of course, before taking any action that may impugn the agencies which approved all the plastics in the shorezone, and still approve them with no scientific or engineering analysis. There is ample basis for action, as my Preliminary Photo Report on Deteriorating Plastic Structures at Lake Tahoe demonstrates (attached). It is not the non-boating public’s responsibility to take microplastics abatement at Lake Tahoe further at this point, beyond cleaning up their own beach litter. Not up to the researchers.

Conclusion

As I have written previously, TRPA and the multiple other shorezone structure approvers are essentially dooming Lake Tahoe to clarity destruction and contamination by MPs for the benefit of a minority of Lake Tahoe stakeholders unless something is done quickly about the shorezone plastics, by trading water quality for recreational boating with NO analysis of the effects. The public and the Legislatures ought to be OUTRAGED! We shall see. It is not the public’s responsibility for this planning and regulatory failure, beyond assisting with removing deteriorating private plastic structures, not my responsibility: DO YOUR JOB TRPA, if you are competent to do so. Be accountable for your failures, or invite further litigation and face the environmental and legal repercussions of your actions past and PRESENT.

Alan Miller, Professional Engineer

Attached: Preliminary Photo Report on Deteriorating Plastic Structures at Lake Tahoe

Preliminary Photo Report on Deteriorating Plastic Structures at Lake Tahoe

By Alan Miller, PE May 29, 2023

Deteriorating PVC decking, with polystyrene (PS) “popcorn” in the water from disintegrating ballasts. Tahoe Keys Marina. (8063)

Plastic decking deteriorated from weathering and flaking off as microplastics over waters. Typical of the hundred of plastics docks at Tahoe Keys Marina. (7982)

Introductory Remarks

This report is a preliminary examination of plastic shorezone structures at Lake Tahoe, all in California, for documenting conditions at certain marinas and other selected water locations accessible to the public. The sheer quantity of plastic is staggering, and difficult to show in pictures without a report of extraordinary length. These photos therefore serve as representative examples of conditions notably more extensive. The Tahoe City Marina (TCM) and Tahoe Keys Marina (TKM) are large, esp. the latter, I soon tired of photographing individual (labeled) piers in the hundreds at TKM, which were generally in similar deteriorated conditions as shown above.

This report provides a short photo tour and highlights areas where plastic wastes are being discharged to the water environment in violation of California water quality laws and prohibitions. A variety of materials and plastics will be shown, with a focus on the fixed structures. That said, it has to be noted that there are numerous other sources of plastic associated with mobile sources: boats, their vinyl interiors, floats, covers and tarps, curtains, manufactured wood products (plywood made with polymer glues), and numerous other things which are not a focus of this report, but are sources in and near waters that must be considered. Unlike many other sources of microplastics, ALL of these microplastic pollution sources may be subject to regulatory control and have historically not been. I suspect that the many plastic decking products begin to deteriorate shortly after installation, at invisible rates, until the unraveling becomes readily visible. Thus, no need for microscopes and expensive water testing to know there's a problem, only to characterize and quantify the extent.

I worked my entire career with the marinas at Lake Tahoe, and oversaw the renewal of the Lake Tahoe Marina General Permit adopted by the Lahontan Water Board in 2016, specific for Lake Tahoe, which is still in effect. Shoreline structures at Lake Tahoe and boating (with the exception of sewage management, 2-stroke engine ban and aquatic invasive species) are viewed and managed much like in any other water body nationwide, but Lake Tahoe is not like other water bodies. It is both ultra-pure and ultra-large, due to its tremendous depths. This provides an average hydraulic residence time reportedly on the order of 600 years, due to it single outflow. Thus contaminants such as plastic will accumulate over time, much as they do in the various gyres of the oceans, contaminate the water and occlude clarity. I assert that Lake Tahoe is under severe unrecognized threat of plastic contamination, which has barely begun to be studied by water sampling, with the public and private plastic docks lake-wide a ticking plastic time bomb. Marinas are concentrated sources, but homeowner docks are numerous and many consist in whole or part of plastics. They are not a focus of this report. Concentrated or dispersed, the plastics are generally subject to removal from the water column by settling only

if the plastic particles are heavier than water, where they will contaminate sediments, particularly in the near-shore environments.

If boating is to continue at Lake Tahoe to serve public recreation, the likely far-worse sources of plastics which are subject to control and abatement/removal over time are the fixed plastic shoreline structures subject to regulations. That is therefore the starting point for abating the prohibited discharges of plastic litter and microplastics, especially with available viable alternatives: rock, wood, metal, concrete. Lake Tahoe has already absorbed a lot of sin. Any delay in regulatory action will only make the problems worsen.

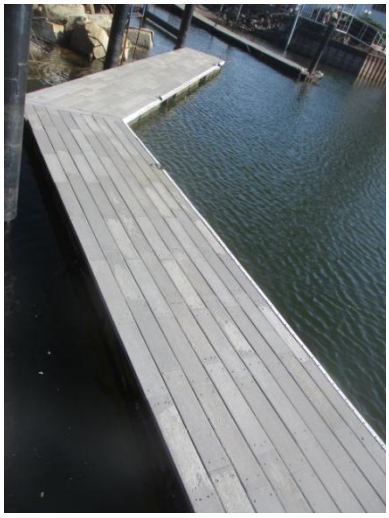
Photos are organized by Marina in the main, with captions and annotations beneath the photo. (Numbers are for my reference.) Information is presented in the following order:

1. Tahoe Keys Marina
2. Tahoe Keys Homeowner Lagoons
3. Ski Run Marina
4. Lakeside Marina
5. Tahoe City Marina
6. Obexer’s Marina

Tahoe Keys Marina (TKM); April 29, 2023

Welcome to the Tahoe Keys Marina! This is the pier adjacent the boat ramp, a portion of TKM. Plywood decking contains epoxies and glues and extends the entire length of this long pier. Plastic in the walkway, versus side extensions, is subject to heavy foot traffic, dragging things, rolling things, etc., and likely deteriorated first. When was plywood installed? Whether the plywood is applied over deteriorating plastic in the walkway is a question subject to further inspection. Plywood is subject to weathering and deterioration. Lovely grey though. (7959)

Spalling and flaking plastic decking shows plastics are friable with weathering and become microplastics. To state the obvious, there is nowhere for the plastics to go but into the water. Degradation like this appears to be widespread but inconsistent and results in the "checkerboard" patterns, shown in the following side-deck photos, from different deterioration rates; all are eroding, and there are hundreds.



(7958)

(7978)

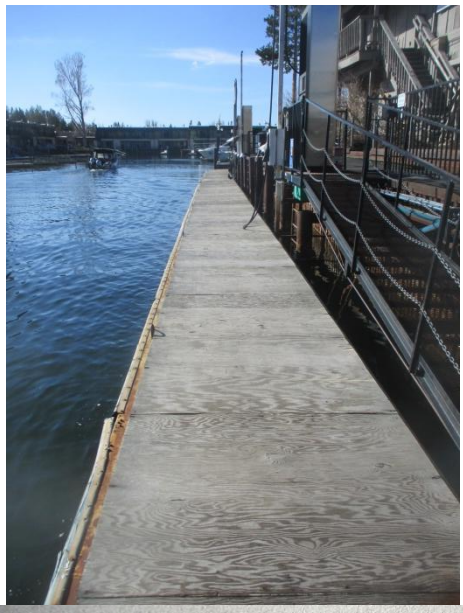
Four of six boat ramps missing docks, broken and submerged by winter snow and ice, post-thaw. Condo side, facing southerly. (7985)

Plastic carpet over plywood. Such plastic turf replacements are not uncommon at the marinas I visited. Green color, attractive to waterfowl. (7991)

Deteriorating weathered plywood. (7993)

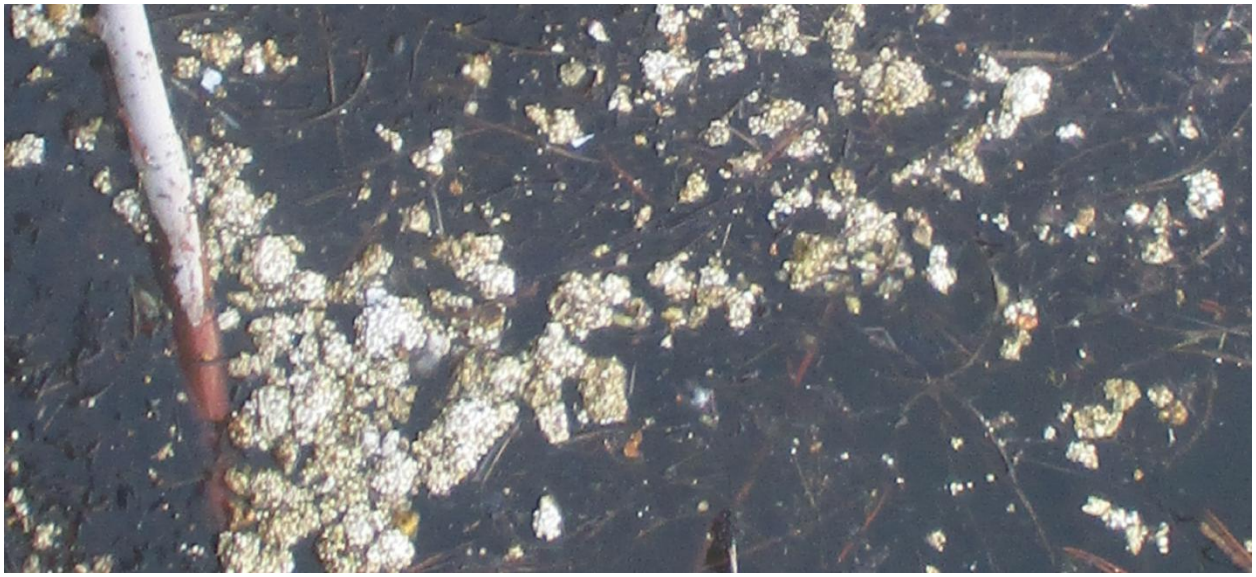
Held together with plastic tape. (7995)

Some older pier decks are concrete, which hold up better, or wood. Here is a floating dock extension (above center pier, whitish) that is partly covered by plastic sheathing. (8011)

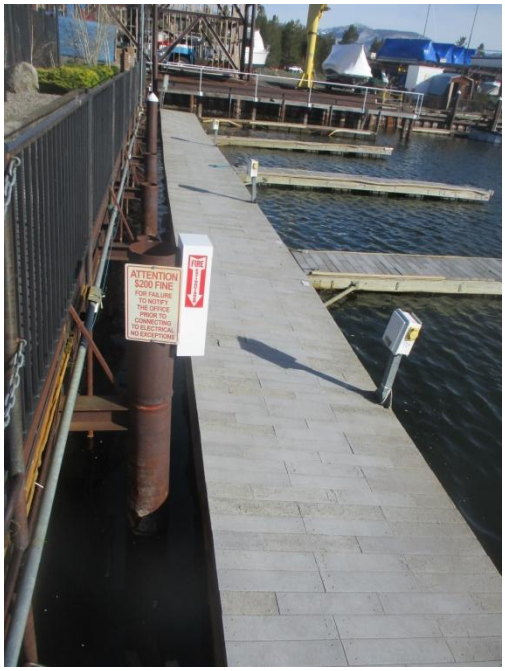


Fuel dock area, plywood and plastic panels. Note cracking, abrasions. (8020) (8022) (8023)

One of many “popcorn” pier deck floats, plastic covers missing; note floating particulates dispersing in water in first photo. Close-up of deteriorating plastics, most likely polystyrene. What lurks below the waterline? How much of the original plastic mass is missing? (8049) (8050)



Close up of polystrene pollutants. (8056)

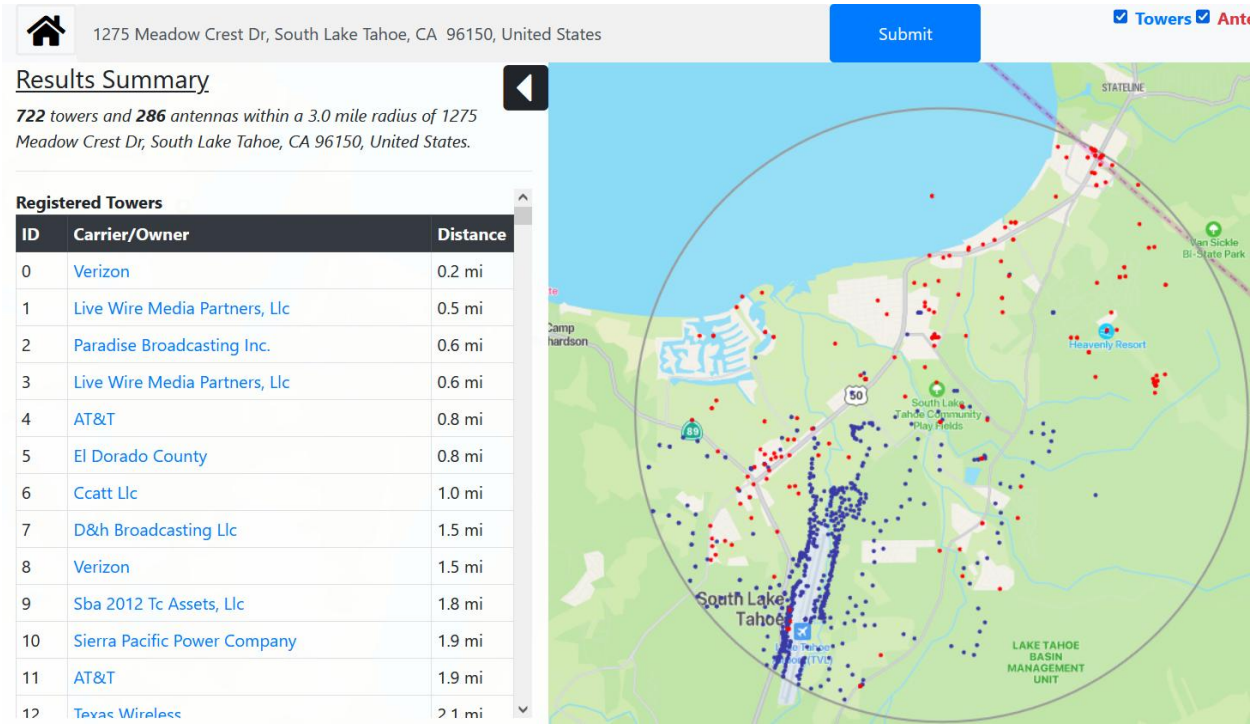


Deteriorating “checkerboard” decks, south end with boat hoist shown, top middle. Popcorn in water. (8062)

Floating microplastics; algae bloom, plastics, boat hoist area, lower photo. (8060) (8064)

Turbidity curtain, plastic, stored adjacent to waters. Presumably ready for deployment, but covered in a coating of fine white microplastic dust from weathering and/or UV light exposure. (8071)

Telecommunications macrotower, near boat hoist, between the TKM and Upper Truckee River/Marsh restoration site; photo facing east. Could there be any connection with tower electromagnetic radiation emissions and the poor water quality conditions observed in this location? Microwaves penetrate water, are used for cooking by exciting water molecules. (8066)



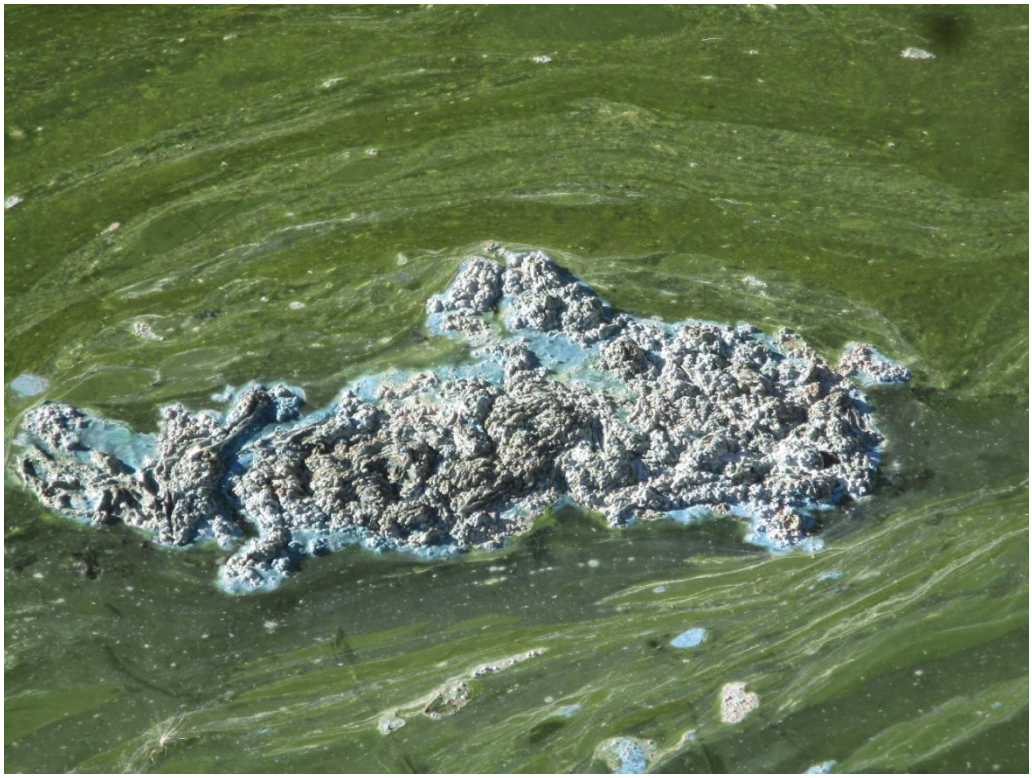
The tower shown previously is just one of 722 towers and 286 antennas in a three-mile radius, as shown circled, including the (blue) Upper Truckee River beside the Airport, all of the “near-shore” areas along Highway 50, and over and near waters, including the Tahoe Keys and TKM, where degraded shorezone conditions have been the subject of much public and scientific interest in recent years. Radiation exposure is cumulative, every antenna in a specified range adding to the energies and durations. Microwaves are known to interact strongly with the water molecule, depending on the frequency and energy levels. It is known to destroy the tetrahedral microstructure of water at certain frequencies. The effects of electromagnetic energies have long been known to the military, and their telecom allies, but they are not adding to the scientific inquiries.

It is unknown what effects the microwaves may be having on the ultra-pure waters of Lake Tahoe or it largest tributary. Besides the direct effects of microwaves on waters, beyond but including heating, I speculate that there could be adverse effects on organisms in the aquatic environment, perhaps subtle, effects that degrade the environment generally and together with other factors shift localized ecologies and water quality conditions to less desirable states, i.e., fostering AIS, algae growth, poor clarity, etc.

Tahoe Keyss Homeowner Lagoons

Tahoe Keys Lagoon, west of Lido, 8/5/22, after dual treatments for AIS. Note intact docks and piers, algal bloom, poor water quality, waters closed to boating (“the lost season” for many). (5003)

Algae in full bloom, 8/22/22, post-treatments, a blue variety never before seen at Lake Tahoe, to my knowledge. May it never be seen again. (5154) [Side note: coincidentally, this was the day I filed my Appeal on the Ski Run Tower.]



Close-up of a floating blue-grey patch, presumably algae. 8/22/22. Horrific stench. These patches would dry in the sun and accumulate on the shoreline, where they persisted until Fall. I have not seen such photos presented by the TRPA to the public in connection with the treatment projects. (5153)

Same area as prior photos, west of Lido, 8/29/22; windblown algae on surface of bloom, foaming, slightly tinged with blue. Note intact docks.

Same area following year, 4/20/23, water rising fast. Note poor turbidity. (7642)

Note the number of submerged, damaged docks, especially on the far bank. 8/20/23 (7643)

Docks submerged by heavy winter snows, Spring 2023. (7487)

Submerged plastic dock, typical of the many that will require repairs following the winter of 2022-2023. (7513)

Plastic docks buried and broken by winter snow and ice, Spring 2023. (7519)

Ski Run Marina; 5/18/22 and 4/27/23

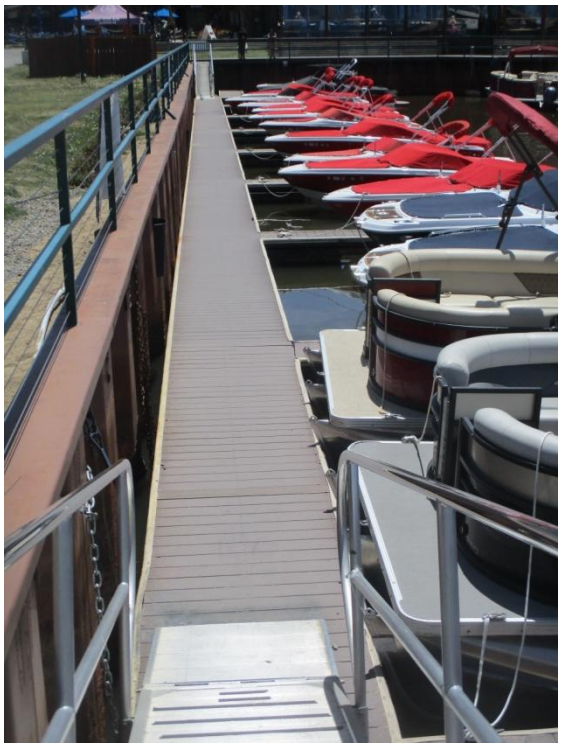
Ski Run Marina, with its rental boat fleet, looking south, with plastic decking laid on sand near beach, abraded by sandy shoes, walkers, equipment. (4229)

Ski Run Marina, looking north. Lots of plastics, generally in reasonably good condition, though still subject to abrasion by sand, as shown in cracks, and weathering. Note turbidity curtain surrounding (yellow). (4234)

Discarded plastic shard from turbidity curtain in use, plastic deteriorating. (4241)

Close up of typical plastic decking showing weathering, surface wear and scratches from sand. (4245)

Plastic floats baking in the sun. (4232)



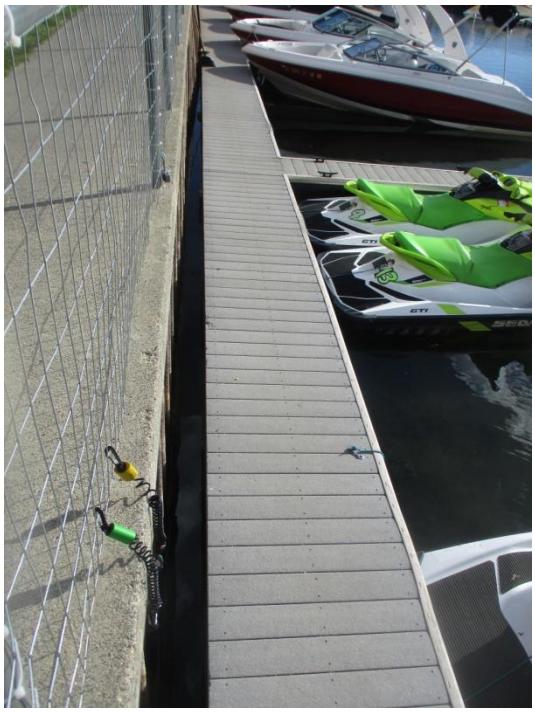
Abrasion of plastics at metal ramp interfaces is typical. (4231)

Spring 2023, plastic popcorn in the water. Vinyl boat interiors, plastic fabrics, decking. (7896)

Lakeside Marina; 8/8/22

Small marina. Wrap-around plastic decking, generally in good condition, adjacent boat ramp. (50 31)

(5035)

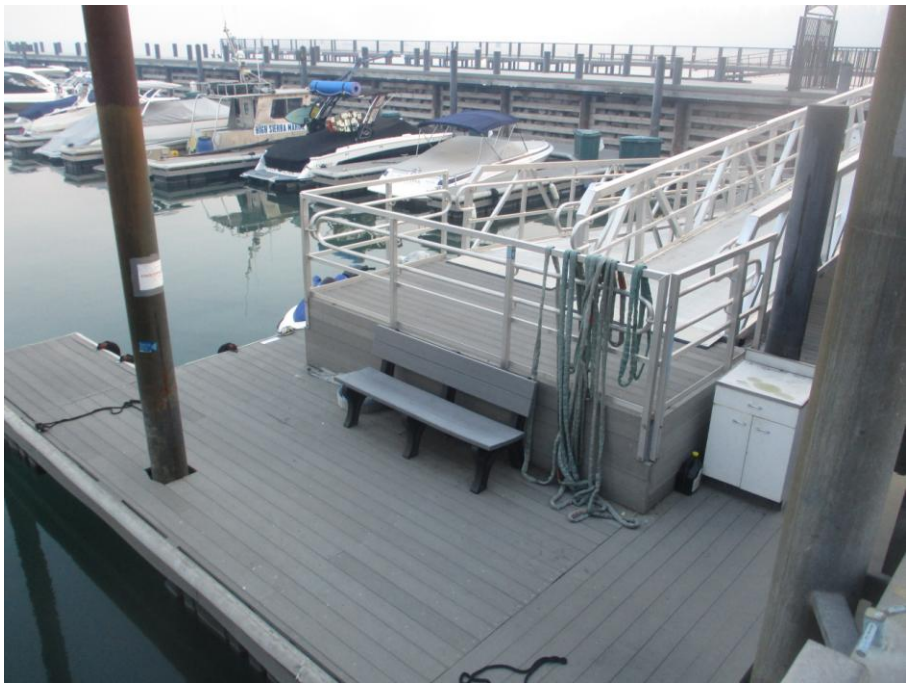


Some minor weathering and surface deterioration of decking on close inspection. (5033)

Lakeside Marina office. Realistic as it appears, my recall is this “lawn” is plastic astroturf. Notice “strips” parallel to shadow at right. This was in August following a period of dry years. (5037)

Tahoe City Marina; 9/15/22

GATED, Access Restricted. The TCM contains a new part, and an old part, which was retained with marina expansion under TRPA's Master Planning Process for marinas a decade ago or so. (5462)



No shortage of plastics at TCM. The following photos are in the newer part, which tends to be in better condition. (5458)

Plastic sheathing material (5463)

Checkerboards. (5467)

Ramp with rug/cover. (5469)

Quite a lot of concentrated plastic to consider, many sources, cumulatively. (5473)

Easterly side, this would be the older part if memory serves. (5483)

Example of decking in the older sections, ramp at top of photo. (5464)

Weathered, scuffed, scratched, stained decking. (5485)

Abrasion at ramp connections, weathered plywood. (5484)

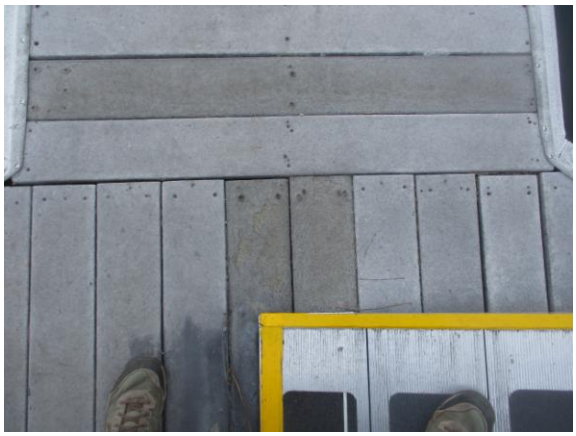
Plastic astroturf along entire length of sheet piles. (5476)

Obexer's Marina; 9/15/22

Looking northerly, fuel dock on far end. (5449)

Looking easterly, fuel dock on far end. Note severely degraded plastic decking at entryway. All of the observed decking is in a state of decay at this marina, while still capable of serving functionally. Observations at Obexer's marina include a high number of degraded deck boards, plastic with breakage, cuts, chips, abrasion and general deterioration, as follows. (5454)

Checkerboard decks, ramp abrasion.(5410)



Deteriorated decking. (5416)

Some replacements were obviously needed. The material in the foreground is weathered, friable and subject to further weathering and dispersal. How bad did it get prior to replacement? (5438)

Severely weathered plastic deck board with other less-weathered plastic deck boards.(5420)

End-view of plastic deck boards showing cracking. (5430)

Summary Comments

There is much more information to present on a plastic surface which has barely been scratched, but this gets at the concerns. This is but a small sampling of existing marinas, public piers and launches, private docks, and shorezone structures at Lake Tahoe, many of which are comprised of plastics in an accelerating state of decay. This report is enough to give a flavor and sense of what is happening at our Lake with regard to microplastics and where it will lead unchecked. This is despite any currently applicable Permit "conditions" or requirements.

Time is of the essence for regulators to intervene to disrupt the ongoing waste discharges, which are prohibited by law, and detrimental to beneficial uses of water, going on under their watch. The affair with unbridled plastics in the aquatic environment at Lake Tahoe must end. To do otherwise courts disastrous water quality consequences lakewide. As the circumstances show, and with many repairs and replacements and new structures needed following the last winter, bringing in more plastics and plastic pollution should be prevented in my view, if at all possible, and fast. Thus, this "preliminary" report to help stimulate action.

Now that research has discovered microplastics in Lake Tahoe, in light of this report we may plausibly surmise that they are not all from airborne dust and landscape runoff, bringing monopine and other unchecked wastes, but are related to the structures emplaced in the shorezone, as has been allowed without due examination of the potential adverse environmental effects.

This in-lake source of plastic pollution and its potential effects on Lake Tahoe water clarity is outside the realm of the Total Maximum Daily Load regulation developed for Lake Tahoe and, based on the record, was overlooked and given no consideration with regard to water clarity and research models.

From: Marja Ambler <mambler@trpa.gov>
Sent: 2/27/2024 10:05:35 AM
To: Public Comment <PublicComment@trpa.gov>
Subject: FW: Planned Remodel of the California Tahoe Emergency Services Operations Authority
Attachments: Outlook-Graphical .png , CAO to TRPA_Cal Tahoe EMS Letter of Support_02.27.24.pdf , image001.jpg

---

Marja Ambler
Executive Assistant
775-589-5287

TAHOE REGIONAL PLANNING AGENCY
P.O. Box 5310
Stateline, NV 89449
775-588-4547
www.trpa.gov

From: Jeanette Salmon <Jeanette.Salmon@edcgov.us>
Sent: Tuesday, February 27, 2024 8:55 AM
To: Cindy.Gustafson <cindygustafson@placer.ca.gov>
Cc: Julie Regan <jregan@trpa.gov>; Marja Ambler <mambler@trpa.gov>; ryancaljpa@gmail.com; Tiffany Schmid <Tiffany.Schmid@edcgov.us>
Subject: Planned Remodel of the California Tahoe Emergency Services Operations Authority

Chair Gustafson,

Please see the attached letter of support from our CAO, Tiffany Schmid. I am also blind copying the TRPA Governing Board as well as our Board of Supervisors.

Kind Regards,

Jeanette Salmon

Administrative Technician

Chief Administrative Office

County of El Dorado

330 Fair Lane

Placerville, CA 95667

Direct Line: (530) 621-5158

Jeanette.Salmon@edcgov.us

Elevate to El Dorado
A Great Place to Live, Work & Play

County of El Dorado

Chief Administrative Office

330 Fair Lane
Placerville, CA 95667-4197

Tiffany Schmid
Chief Administrative Officer

Phone (530) 626-5530

February 27, 2024

Cindy Gustafson, Chair
Tahoe Regional Planning Agency
PO Box 5310
Stateline, NV 89449

Chair Gustafson,

I am writing to express my support for the planned remodel of the California Tahoe Emergency Services Operations Authority at 3066 Lake Tahoe Blvd in South Lake Tahoe. The current location serves as a crucial hub for emergency medical services in the southern area of the Lake Tahoe Basin, and the proposed remodel will further enhance the Authority's ability to respond promptly to medical emergencies.

It is paramount for emergency services providers to operate efficiently and effectively. To that end, El Dorado County has leased the current ambulance operations headquarters to the California Tahoe Emergency Services Operations Authority at the rate of $1 per year and has invested $4.7 million in the renovation of the building to ensure that the residents and visitors in South Lake Tahoe will continue to receive timely and life-saving care.

Sincerely,

Tiffany Schmid
Chief Administrative Officer

c: El Dorado County Board of Supervisors
Tahoe Regional Planning Agency Governing Board
Julie Regan, TRPA Executive Director
Ryan Wagoner, Cal Tahoe EMS Executive Director
Marja Ambler, TRPA Clerk to the Board

From: Elisabeth Lernhardt <elernhardt@yahoo.com>
Sent: 2/27/2024 3:28:11 PM
To: Public Comment <PublicComment@trpa.gov>
Subject: TRPA

Please accept my public comment as part of the general comments for tomorrows meeting.
Sincerely
Elisabeth Lernhardt

The Coming Transit Apocalypse

The Coming Transit Apocalypse

From: Dolores Butkus <doloresbutkus73@yahoo.com>
Sent: 2/26/2024 4:11:10 PM
To: Public Comment <PublicComment@trpa.gov>
Subject: Feb. 28th board meeting re: Affordable & Workforce Housing

---

To the members of the TRPA board,
I am 82 years old & for 25 years I have been the owner of a cabin in Tahoma. Buying this mountain home was a dream come true & was to be a legacy for our children. But I can no longer afford to pay for all the expenses involved. I was depending on rental income to help with the upkeep, etc., but I no longer have that option because of your overreaching, unfair,unrealistic policies.

You are treating all the area around Lake Tahoe as if it was South Shore. For years the problems of affordable housing, traffic congestion, etc. have plagued South Shore, but TRPA & El Dorado County did nothing until the situation was out-of-hand.

How many "granny units" have been built ? How many lots have the space for a second unit? How many residents can afford the cost?

Were homeowners informed about the new policies? No, but real estate companies were. For almost 3 years I have been #58 on the waiting list for a permit to rent my cabin. But there are real estate managed homes within 500 feet of my property so what are my chances of ever getting a permit? And I really don't have the money to pay $600. for a fire inspection EACH YEAR!

I have several other concerns but I will end for now. Please revise your policies! There are other solutions that won't upset so many Tahoe homeowners.

Dolores Butkus
7299 Antelope Way
Tahoma, CA
925-988-0735

From: Niobe Burden Austere <niobe.burden@gmail.com>
Sent: 2/23/2024 1:06:31 PM
To: Public Comment <PublicComment@trpa.gov>
Cc: Public Comment NV Legislative Committee <tahoe@lcb.state.nv.us>;
Subject: Public Interest Comment - TRPA Governing Board - February 28 2024 - Proposed future agenda item -Implementation of Story Poles for Project Height transparency
Attachments: Story_Pole_Info_Example_SolonaBeach.pdf , Visual Aids and Story Poles_SantaBarbara.pdf

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Please accept this item as Public Comment for the February 28 TRPA Governing Board meeting and future agenda discussion item. Thank you.

The idea of **Story - Poles** has been around, first utilized in Europe but also other places around the US including Solona Beach, Santa Barbara, Sonoma and Marin County. Architectural drawings and elevation plans can be deceiving. It seems like a **logical way for Review Committees to access a project and to address transparency for the public when visualizing proposed projects and upholding Scenic Resource Thresholds.** I propose discussion of this item and how a budget can be adopted to acquire them for developers to utilize/recycle or a contractor like www.cstorypoles.com/ could be contracted....they shouldn't be that expensive and would be positive for the TRPA and local jurisdictions to adopt.

Examples from both Santa Barbara and Solona Beach of an Information Sheet (with a better explanation) and application for the developer are attached and would be easy enough for TRPA/local jurisdictions to draft their own requirements from .

This item for discussion as been proposed in public comment previously with no response and also submitted to the NV Legislative TRPA Oversight Committee.

Thank you for your consideration.

Respectfully submitted,
Niobe Burden Austere
---
(530)320-2100
Concerned property owner and conservation photographer

USE OF STORY POLES

BACKGROUND:

Story poles are used to show the elevations and silhouette of a proposed building or an addition to an existing building. The entire three-dimensional building envelope of the proposed addition must be story poled, including portions below 16 feet in height, as well as chimneys, balconies, eaves beyond two feet in length, exterior stairways, and other architectural features as determined by Staff. Story poles are intended to aid neighbors, Staff personnel, and members of decision-making bodies in their evaluation of a proposed project.

INSTALLATION:

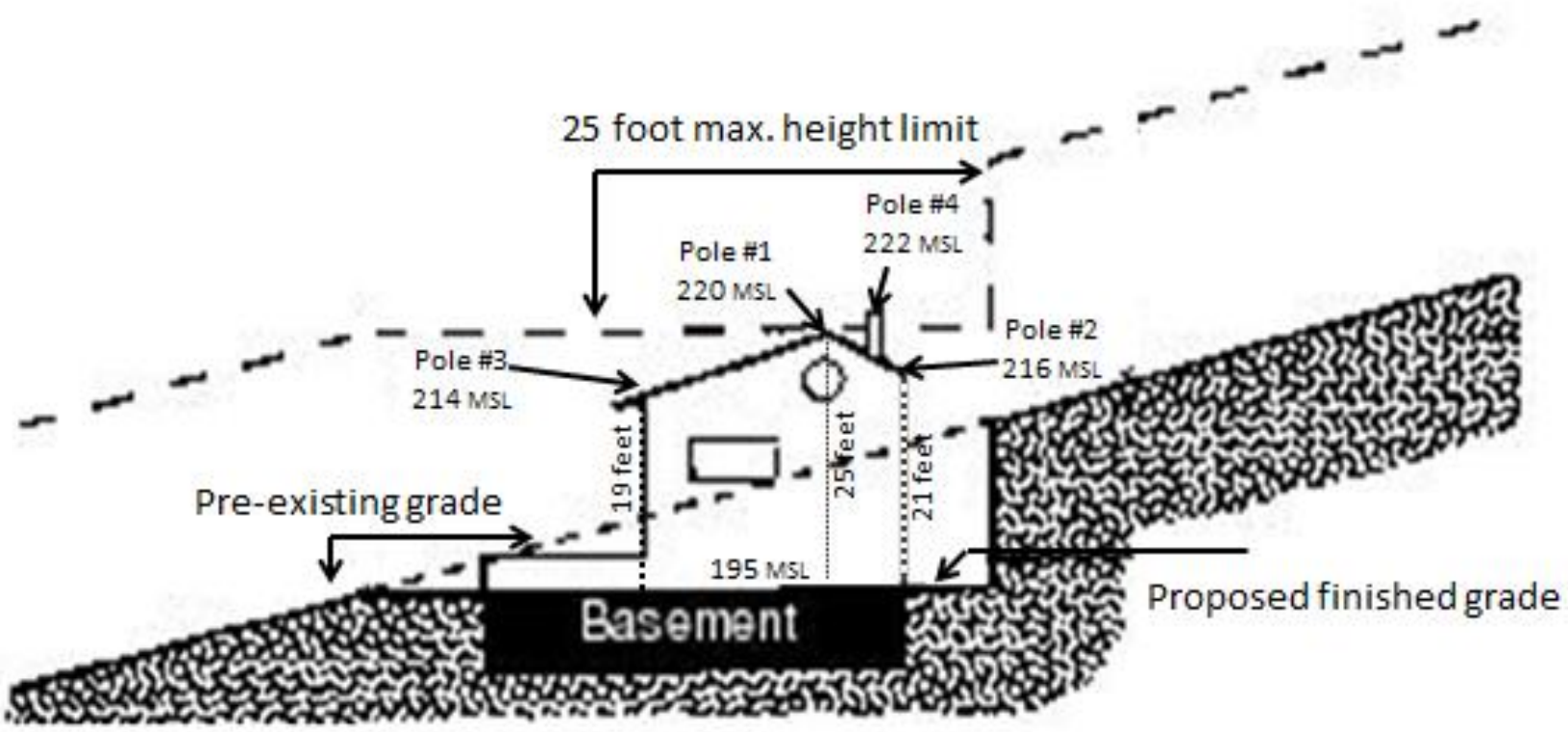
- Prior to erecting the story poles, the applicant and/or representative **must** contact the Community Development Department to discuss the story polling process and procedures, and to review and approve the story pole plot plan prior to construction.
- The story poles must be constructed as per an approved and certified story pole plan.
- Story poles shall be erected of white PVC pipe in combination with wire or line to show roof lines. A similar white material may be approved by the Community Development Director and shall be requested before the poles are erected. Small pieces of brightly colored cloth or tape should be affixed to the wire or line to facilitate accurate viewing of the outline of the proposed structure. Eaves that extend beyond two feet should be shown with different colored cloth or tape.
- Story poles shall be marked at every foot for the entirety of the pole. Every fifth foot marker should be a contrasting color.
- Each story pole shall be numbered and shall correspond with the numbering on the approved and certified story pole plot plan. Each number on the story pole must be a minimum size of two (2) inches by three (3) inches, must be placed one (1) foot below the top and four (4) feet above the bottom of the pole, and must remain legible throughout the entire process. The use of black vinyl self-stick numbers is highly recommended.
- If a story pole string line is altered to reflect a project design revision, the flags attached to the revised string line should be a different color to reflect the proposed modification.

CERTIFICATION/INSPECTION

- The accuracy of the structural outline established by the story poles shall be verified by a signed statement of a licensed surveyor or civil engineer on a story pole plot plan.
- Prior to the View Assessment Commission's first duly noticed public hearing date, City Staff may make an on-site inspection to verify compliance with the approved story pole plan.
- In the event that the required story poles are not erected according to the approved story pole plan, an application may be continued from its scheduled hearing date to a subsequent meeting so that the story poles may be corrected.

The attached sketches illustrate a typical story pole installation.

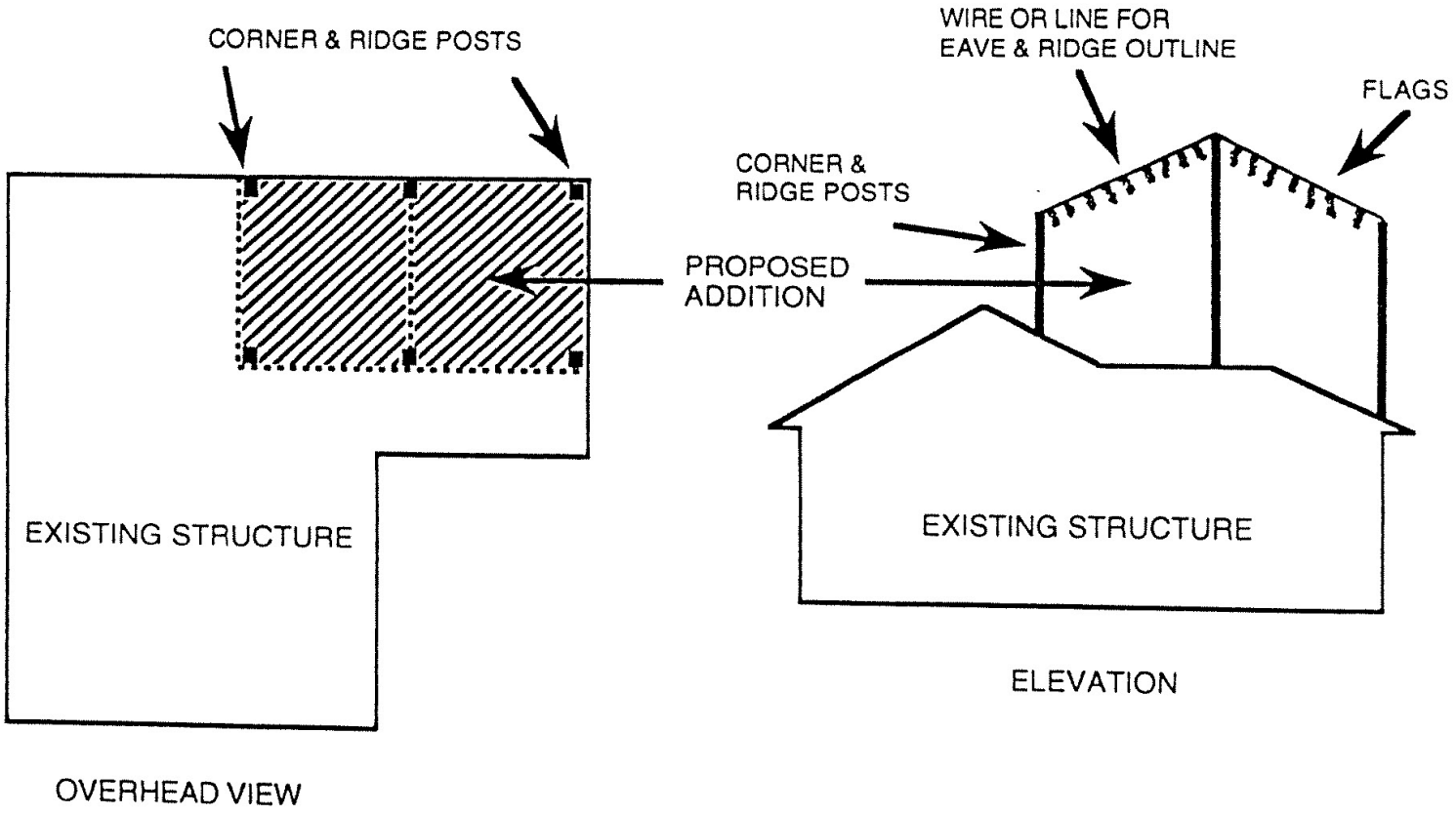
Story Pole Elevation Illustration



Contact your project Planner if you have additional questions

* Illustration is not to scale

STORY POLE ILLUSTRATION



CITY OF SOLANA BEACH

635 SOUTH HIGHWAY 101 • SOLANA BEACH • CALIFORNIA 92075 • (858) 720-2400 • FAX (858) 755-1782

STORY POLE HEIGHT CERTIFICATION

Date: _____

Assessor's Parcel No.: _____

Site Address: _____

Owner's Name: _____

This is to certify that on _____ the story poles located on the above referenced site were surveyed by the undersigned, and found to be in conformance with the attached story pole plot plan. In addition, the following measurements were found:

Highest point of the story poles: _____ (M.S.L.)*

Pre-existing grade: _____ (M.S.L.)*

Finished grade elevation: _____ (M.S.L.)*

Finished floor elevation: _____ (M.S.L.)*

TOTAL MAXIMUM HEIGHT: _____

PLEASE NOTE: **The story poles must show and include the total height must include roofing materials.** At framing inspection, a **Height Certification** will be required which must be in exact conformance with the maximum height shown on Story Pole Height Certification.

For additional information, please contact me at _____ (phone number)

_____
Licensed Land Surveyor

Seal of Registration:

*Mean Sea Level (MSL) — all measurements must utilize an established benchmark that will not change over the course of the project.

City of SANTA BARBARA PLANNING

COMMUNITY DEVELOPMENT DEPARTMENT
630 GARDEN ST. SANTA BARBARA, CA 93101
(805) 564-5578 I SantaBarbaraCA.gov

VISUAL AIDS & STORY POLES

SUPPLEMENTAL APPLICATION

GENERAL INFORMATION

WHAT IS A VISUAL AID?

"Visual aids" include story poles, photo simulations, digital animations, and other means, such as 3-D computer models, to assist the City and the public in understanding a project's size, bulk and scale in relation to the neighborhood and its effects on important public scenic views.

WHEN ARE STORY POLES NECESSARY?

Story poles are required on most development review projects subject to review by the Planning Commission or Staff Hearing Officer in order to make the required findings, or when necessary to make a determination on whether the project will result in significant environmental impacts on important public scenic views. Design Review bodies also require story poles or other visual aids in order to make findings regarding appropriate size, bulk and scale, and neighborhood compatibility.

HOW DOES THE PROCESS WORK?

If required, story poles shall be installed after design review conceptual review but before project design approval or Planning Commission or Staff Hearing Officer review. Planning staff, or the design review bodies, may consider exceptions to the requirements for story poles, based on the criteria described on page 3, prior to determining application completeness. Design review bodies or planning staff may also request other visual aids, such as photo simulations, perspective drawings, neighborhood context studies, three-dimensional aerial views, or massing models, on a case-by-case basis.

STORY POLE REQUIREMENTS

Story poles are required for the following projects. On development review projects, exemptions must be requested by the applicant and granted by staff prior to determining application completeness. On design review projects, the design review body will consider requests to waive story poles during conceptual review.

Development Review Projects

- A new **nonresidential, mixed-use, or multi-unit** residential building, or substantial addition, that exceeds 17-feet in height from existing grade.
- A new **single-unit** residential building, or substantial addition, when **ANY** of the following apply:
  - Floor to lot area ratio exceeds **0.40**
  - Height of the building **substantially exceeds** that of surrounding buildings
  - Building will block or reduce important **public scenic views**
  - Building is **highly visible to the public***
  - Proposed on, or to project above, a topographic **ridgeline**
  - Exceeds **85%** of the required **Maximum Floor Area**

Design Review Projects

- A **single-unit** residential project that exceeds **85%** of the required **Maximum Floor Area**
- At the **discretion** of the design review body, story poles may be required if the project has the potential to substantially exceed the height of surrounding buildings, or block or reduce important public scenic views, or if the majority of the design review body is having difficulty finding the project consistent with the **Project Compatibility** criteria or **Neighborhood Preservation** findings.
- Multi-unit housing projects using the **Average Unit-Size Density Incentive Program** require story poles when **ANY** of the following apply (per City Council Resolution 17-006):
  - Projects with **4 stories** located outside of El Pueblo Viejo (EPV) Landmark District
  - Projects with **3 stories**, or that measure 30-feet or more in height (whichever is lower) when proposed in a **residential zone** (R-M or R-MH Zones)
  - Projects with 3 stories, or that measure 30-feet or more in height (whichever is lower) when proposed in a location where 3-story buildings do not currently exist within **300-feet** of the project site.
  - Projects of any height proposed within 150 feet of a designated **Historic Resource**
  - Projects that require **Planning Commission Concept Review** pursuant to Section 30.150.060, Pre-Application and Concept Review Required.
  - Projects that are determined to be **highly visible to the public*** and referred by the design review body for Planning Commission comments.

Projects That Do Not Include Buildings

Tentative Subdivision Maps often do not include future buildings to be constructed on the new parcels. In order to provide information necessary to evaluate the project, the following information shall be provided on site for the Planning Commission or Staff Hearing Officer site visit:

- Mark all **trees** to be removed.
- Stake all **building envelopes** or footprints and driveway locations.
- Stake or otherwise mark all existing and proposed property and **parcel corners**.
- In some cases, where impacts on important **public scenic views** are potentially significant, story poles may be required to delineate a reasonable worst-case scenario for environmental review. Planning staff will determine if they are required. In some cases, staff may request story poles to show **retaining walls** that are more than 42-inches in height. Story poles should be installed at the ends of the retaining walls, as well as at various points in-between sufficient to indicate the length and height of the retaining walls.

Criteria for Story Pole Exemptions

The following projects may be exempted from story pole requirements if planning staff, or the design review bodies, make the following determinations during Conceptual Review, or prior to determining application completeness.

- Structures are **clearly consistent** in terms of size, bulk, and scale with other buildings in the surrounding neighborhood.
- Structures are the **same height** as, or smaller than, existing buildings in the neighborhood.
- The proposed structures will not involve blockage or substantial reduction of an important **public scenic view.**
- The proposed structures will not be on or project above a **topographic ridgeline**.
- The **existing condition** of the site (dense vegetation, existing buildings, etc.) does not allow for adequate story pole installation. In this case, one or more of the other types of visual aids will be required.

*__Highly Visible to the Public.__ A building, structure, or improvement is highly visible to the public if it appears prominently and is easily observed by an average person standing or traveling upon a public right-of-way (including streets and sidewalks) or prominent and easily visible from a public park, beach, or other area generally open for public use. A building, structure or improvement highly visible to the public usually fronts public streets or other public areas.

SUBMITTAL INFORMATION

Provide any supporting materials described in this Supplemental Application and submit it along with a complete Planning (PLN) Application.

STORY POLE SITE PLAN

Plans are required for all story pole installations prior to the application being determined complete.

- [ ] **Location**

  Show location and height of each pole. Show major plate heights and ridgelines to be identified in the field. Focus on major ridgelines and wall plate lines along the building edges. The goal is to show a simple "box" that outlines the mass of the building. It is not necessary or appropriate to include all of the articulations. Do not forget to account for proposed changes in grade or finished floor with depictions of proposed finished height and elevation notations. Show location of any stakes or chalk/string lines used to outline the building footprint.

- [ ] **Legend**

  Include a legend on the Story Pole Plan that shows the location of each story pole with a symbol for each story pole that includes its number, location and height. In addition, all stake locations and all chalk/string line locations shall be noted.

STORY POLE INSTALLATION

Story poles shall be installed prior to the public hearing for decision-maker determination as follows.

- [ ] **Materials**

  Story poles should be made of 2x lumber, PVC piping, or other sturdy material and should be properly braced for safety purposes. The connections used to show ridgelines and plate heights should be made of bright construction tape or netting. Other materials may be acceptable, subject to approval by the Planning Division.

- [ ] **Placement**

  The major building corners, outer plate heights (not the outer edge of the eaves) and ridgelines should be shown. In addition, stake and string or chalk the property lines where they are not clear and outline the building footprints with stakes and strings or chalk lines. Also, mark all trees to be removed. If there is substantial grading that will result in tall or long retaining walls, the Planning Division may request that their location and height be marked on the property. The number and placement of story poles may be reduced in order to reduce costs, subject to consultation with staff or design review bodies, to assure that there will be sufficient story poles to illustrate the end product.

- [ ] **Timing**

  The story pole installation shall be completed a **minimum of 7 days** prior to the public

hearing and shall stay in place until the public hearing, unless story pole placement will result in substantial obstructions to the existing use of the property and a shorter installation period has been approved in advance by the Planning Division. For major projects, longer installation periods may be required. Planning staff will determine whether they will be installed prior to the environmental hearing or for the project consideration hearing. In certain circumstances, re-installation of the story poles may be required for City Council appeals. The applicant may choose to leave the installation in place until the appeal period is over.

Adequacy

In the event required story poles are not installed, or are inadequate, the applicant will be requested to install or improve the story poles and the project hearing will then be continued to a future date to allow the decision-making board or commission to make an additional site visit.

Photographic Record

Once the story poles are in place, the applicant shall photograph the story pole installation, including any angles from which it is visible to the public. Where the project has the potential to affect important public scenic views, additional photos from more distant points may be required. Include a plan or map showing the locations from which the photos were taken and the direction of the photos (i.e., with an arrow), keyed to the photos. The record shall be submitted to the Planning Division at least 1 day prior to removal of the story poles or earlier, if possible. It is recommended that at least one of the photos include a person next to a story pole to provide scale. In addition, prior to issuance of the Final Inspection/Certificate of Occupancy for the project, the applicant will be required to submit photographs of the completed building from the same locations as the photographs taken of the story pole installation for documentation purposes.

Certification Letter

Story poles shall be installed and certified by a licensed professional (surveyor, engineer, architect, landscape architect or contractor). A signed certification letter shall be submitted to staff after installation of the story poles, and before their removal. The certification letter shall include the project address, Assessor Parcel Number (APN), the PLN Record ID number, plus the following statement:

This is to certify that on _____ (date), the story poles located on the above-referenced site were installed or inspected by the undersigned, and found to be in conformance (+/– six inches) with the design, height and location shown on the plans, elevations and the attached story pole plan. For additional information, please contact me at:

_____ (Email and Phone No.)
_____ Signature
_____ Name (printed or typed)
_____ Title and Professional License Stamp

OTHER VISUAL AIDS

Other visual aids are required as noted below or may be requested on a case-by-case basis by the design review body or planning staff prior to project design approval.

NEIGHBORHOOD CONTEXT STUDY

A Neighborhood Context Study is required on all Full Board/Commission projects to assist in the presentation of proposed infill development projects. A Neighborhood Context Study is required for SFDB projects greater than 85% of the maximum required Floor to Lot Area Ratio (FAR).

- The Neighborhood Context Study should include at least **10 surrounding parcels** (ABR and HLC) or **20 surrounding parcels** (SFDB projects). Begin by selecting all parcels directly abutting the project site, parcels located directly across the street and at least one parcel in each direction along the streetscape.
- **Aerial Photographs** to show the project's site and the parcels selected for the Neighborhood Context Study. The maps must display the following: property lines, building outlines, and locational reference for the photos provided.
- Supplemental **photographs** must include the following: all buildings, any established public vistas of the ocean and mountains, photos must be keyed to match the locational reference on the map described above.
- Neighborhood context **data** for the surrounding properties should include heights of buildings, number of stories, zoning designation, size of parcels, building lot coverage (square footage of building outlines).

PHOTO SIMULATIONS

Photo simulations help demonstrate how a proposed building will integrate into its surroundings.

- At a minimum, the **proposed project** shall be shown as an overlay over the existing property, showing the existing buildings on either side of the proposed project for a minimum of one parcel in either direction.
- The photographs should be taken at **eye level** (approximately 5 feet above grade). Reduce proposed building elevations to match the scale of the photographs and overlay on the site photograph. **Color** the elevation to match the proposed materials. If **landscaping** is shown, it shall be shown at no more than 5 years growth unless it is included as a separate overlay. Verify the accurate depiction of plate height, overall roof height and other measurements.
- Include a **map** or plan showing the locations from which the photos were taken and the direction of the photos (with an arrow), keyed to the photos.
- The photo simulation may be created by combining a drawing of the proposed building with photographs. The drawing may be cut out and pasted into a **panoramic photograph** or several photographs put together into a montage of the subject property and neighboring properties. It is vital that the **scale** of the drawing accurately match the scale of the photographs. Also, the viewing perspective of the drawing must accurately match the **viewing perspective** of the

photographs. An effective and accurate way to produce the photo simulation is with a computer program such as SketchUp, CAD, REVIT, or similar 3-D program.

- **Streetscape:** In some cases, a larger section of streetscape, such as the entire street block, may be required to be presented to evaluate a project's compatibility. In these cases, a **rendered streetscape elevation** may be required. The elevation may need to show all of the buildings on the block, including the proposed new building. This elevation should be no less than 1/8" scale and should be in **color**. It is helpful to see the streetscape drawn with and without **trees**. An additional plan sheet might include building elevations that are color-coordinated to show the setback from the street (0 to 5 feet, 5 to 10 feet, etc.).

PERSPECTIVE DRAWINGS

A perspective drawing shows an object as solid volume, rather than as a flat, two-dimensional drawing and shows the composition of the project as it would appear from a certain distance and height, or "perspective" from the project.

- Perspective drawings from one or more prominent **viewpoints** may be required. All roofing variations, wall articulation and eave lines (including plate heights) must be shown. Major trees should also be shown. These drawings must be drawn from the viewpoint of a person (approximately 5 feet above grade).
- The drawings should show **neighboring buildings** and **important features** of adjacent sites in sufficient detail to demonstrate the relationship between the proposed development and its surroundings.
- The drawing must represent how the proposed project would appear to a passerby as seen from the public street at the primary **property frontage**. If the project does not have frontage on a public right of way or is not clearly viewable from the public right of way, the drawing must display an on-site **front view** of the project the drawing must include at least **one human figure** to give a sense of scale.

THREE-DIMENSIONAL MASSING MODEL & AERIAL VIEWS

Computer based 3-D modeling or physical scale models may help visually explain the project.

- Design details are not required; however, all **roofing variations**, **wall articulation** and **eave lines** (including plate heights) should be shown. Major trees should also be included as part of the model. Changes in topography in the area covered by the model must be shown accurately.
- Provide a minimum of **four** aerial photographs from different angles of the existing project site along with the 10 closest properties. Aerial view modeling may be added to the **aerial photographs** to create a photo simulation to visually represent the proposed project's building massing, height, lot coverage, and open space in relation to neighboring buildings and the surrounding area.

A technical guide titled *A Comparative Analysis of Three Story Buildings for Downtown Santa Barbara with Respect to Size, Bulk and Scale* is available on the City's website to assist in the preparation of supplemental studies for the purpose of comparing height, length, elevation, floor-to-floor heights, and relative scale of architectural elements.

From: Ellie <tahoellie@yahoo.com>
Sent: 2/5/2024 10:19:00 AM
To: Public Comment <PublicComment@trpa.gov>
Cc: Karen Fink <kfink@trpa.gov>; Ann Nichols Tahoe Community <ann@annnichols.com>; Leah Kaufman <leah.lkplanning@sbcglobal.net>; Sue and Dan Daniels <susan.daniels@cbnorcal.com>;
Subject: Parking restrictions leave residents with little options

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Please distribute this to TRPA Advisory Planning Commissioners for the February 14, 2024 meeting. And the Governing Board members for their February 28 meeting.

Please read and take into consideration the parking issues with multi family housing complexes when evaluating upcoming Phase 3 Tahoe Living Housing proposals. Zero parking recommendations or in the case of Placer Tahoe Basin Area Plan at. .75 just isn't realistic.

Ellie Waller

> Parking restrictions leave residents with little options | TahoeDailyTribune.com
> https://www.tahoedailytribune.com/news/parking-restrictions-leave-residents-with-little-options/

From: Gloria Reid <gloriareid1510@gmail.com>
Sent: 1/31/2024 8:03:53 PM
To: Public Comment <PublicComment@trpa.gov>
Subject: Tahoe Property

Dear TRPA members,

I have owned the small house at 1510 Tahoe Park Ave, Tahoe City, since 1975. Certainly, I have seen many changes in those years, but the ones that concern me most are occurring now. I urge you, plead with you, to fill your assigned role of PROTECTING Tahoe. You MUST take into consideration the concerns and suggestions of local owners who have long loved and cared for the area.
PLEASE:
Limit further development. There is no way I can see to expand the two lane roads that lead from North Tahoe. In case of fire, and we know that is highly possible, more development makes evacuation difficult or impossible. There will be a humanitarian disaster. We already have far more people than we could safely evacuate.

Development must be limited and careful. There simply MUST BE parking for every hotel or other unit. You must oversee this. We know that even a small house can require several parking spaces in tourist season, and in the winter, off road parking must be allocated to allow for snow removal.

We know that although tourism is fundamental, it has raged out of control in recent years. The only way to stop this is to stop providing more places for people to stay. WE have as much tourism as we can handle now.

Housing for essential and service personnel is essential. Try to get ski areas and large employers to take some responsibility for housing employees.

Tahoe is a national treasure. It is your responsibility to oversee the environmental impact of every little thing that is added/changed. Please be good stewards and take your responsibilities seriously. We need you.

Gloria Reid