Bridget Cornell

From: Edgar Wayburn <edgar.wayburn@pressmail.ch>
Sent: Monday, April 25, 2022 7:27 PM
To: Joanne Marchetta; Marja Ambler; John Marshall; Katherine Hangeland; TRPA
Cc: Bridget Cornell
Subject: TRPA Hearings Officer Meeting—Verizon/Tahoe Seasons New Telecommunications Facility; 3901 Saddle Road, City of South Lake Tahoe, El Dorado County, California; Assessor's Parcel Number 028-231-001, TRPA File Number ERSP2021-0808
Attachments: Hughes_Assessor.pdf; Hughes_Assessor's Map_[redacted].pdf; Hughes_House Plans.pdf; APN [redacted].pdf; quo-warranto-guidelines.pdf

Dear TRPA,

I was disturbed by Danielle Hughes' allegations that "Concerned Citizens" made a false statement in a recent public comment. It would be ironic if this group which has been calling out city leaders on their lies was making false statements themselves. I scrutinized their Nov. 17 City Council comment and concluded that her allegation was *unfounded and misleading*. I quote the only applicable portion of their comment:

"The only public comment in favor of this WTF was submitted by Danielle Hughes, a Carnelian Bay resident who is an employee of the North Shore Transportation Management Association, an expressly separate entity from our South Shore Transportation Management Association (Entity Number: C36299-2004), both of which were created pursuant to CA Gov. Code § 66801 ARTICLE IX(b)(5),(6); NV ST 277.200 ARTICLE IX(b)(5)(6); Public Law 96-551. The legislative history shows that two separate bi-state entities were deliberately created by state and federal legislatures to preserve the sovereignty of each half of the lake. Danielle Hughes violated the sovereignty of the south shore by injecting her northern association into our affairs, which is expressly outside of its jurisdiction. We believe Heidi Hill-Drum asked Danielle Hughes to make a comment on her behalf just as she did at the Ski Run Appeal hearing. Heidi Hill-Drum has a history of manipulating government officials into lobbying on her behalf."

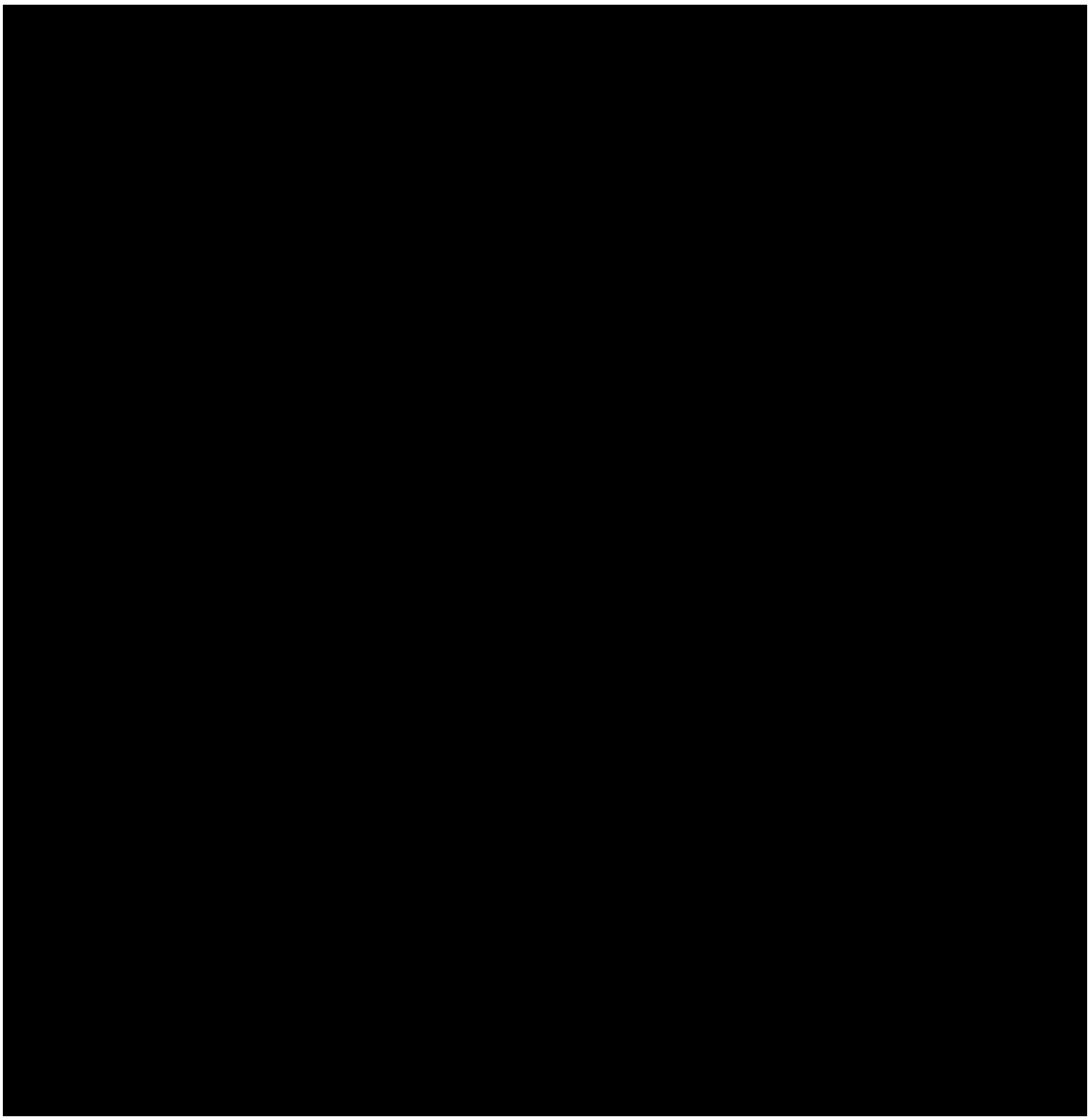
The Concerned Citizens group simply stated what appears to be a firmly held belief. Hughes alleges without any evidence whatsoever that this group does not earnestly believe that she is coordinating with Heidi Hill-Drum on implementing South Tahoe cell towers—in other words that group acted in bad faith. Whatever Concerned Citizens internally believe, they certainly have met the "burden of production" to prosecute such an allegation. It is blatant from the city record and a local newspaper column that Heidi has been asking city officers for inappropriate, unethical, an illegal favors. It is also clear that [redacted] and has a bizarre and uncanny interest in minutia of our South Lake Tahoe City Council agenda. She either has nothing else to fill her day, or somebody has been contacting her. She is actively friends with Heidi, and it would be of no surprise where records show that Heidi is coordinating with her on this, just as they have provided enough evidence to convince me she generally does for nearly every other random player who opines. The only other TTD power-player puppet-maker in this issue is Steve Teshara, but he seems to have no filter concurrently speaking for himself.

Moreover, Hughes shoot dead her credibly right out of the gate, in dismissing the sovereignty issue. She is under the express jurisdiction of the North Shore

Transportation Management Association; the legislative intent of the federal and state laws cited in their comment are that south shore needs to represent its interests independent of the north shore.

[redacted]

She will not live to fully see the catastrophic environmental damage her spoiled myopic cell tower folly is causing, and another generation will have to cleanup all of the damage. She should go back to working with stones, and stay out of ecocide. She has failed to learn the substantive lessons for our era from the fossil record. **It is time for dinosaurs like her to step aside.**



She is yet another case of an incestuous government bureaucrat from a federally-created interstate power, running for concurrent office over a CA government agency (*see* California Constitution Art. VII, § 7). Like Middlebrook, she should have been removed from office and be held liable for each item she illegally voted on, via *quo warranto* legal action.

Hughes holds a constitutionally incompatible regional office in concurrence with employment at a federal interstate agency, whereas the TTD/TRPA are indisputably a federally created power not subject to state control (*Lake County Estates v. Tahoe Reg. Planning Agency*, 440 U.S. 391, 402 (U.S. Supreme Court, 1979)). CA. Const. Article VII, Sec. 7's purpose is "to prohibit conjunction of federal and state office of profit in same person, without any condition whatever, to prevent dual office holding by one person under two separate and distinct governments and separation of allegiance justly due one government by its officers from that due to another power" (*McCoy v. Board of Sup'rs of Los Angeles County*, 18 Cal.2d 193, 196 (California Supreme Court, 1941)). The words "lucrative office" refer to all office "under the United States," and one holding such lucrative office was disqualified to hold any state office, no matter how small the

emolument of the latter might be. The term 'eligible,' as used in our constitution, relates to capacity of holding, as well as capacity of being elected to, an office (*People ex rel. Atty. Gen. v. Leonard*, 73 Cal. 230, 234 (California Supreme Court, 1887)). Because this is a fundamental constitutional violation, the § 1099(b) forfeiture rule is preempted, and hence does not apply; she would not have been able to "accede" or keep thereafter her elected office. *See also*, Cal. Gov. Code §§ 1099 & 1126.

She ought to "okay, boomer" herself all the way to Iowa. There, an ingenuous town is missing its sociopathic Mary Kay sales lady, and a charlatan box of magic crystals.

Peace,

Edgar Wayburn

Placer County Assessor

Information as of Lien Date **January 1st 2020**

 **View Maps**

Property Information

[redacted]

[redacted]

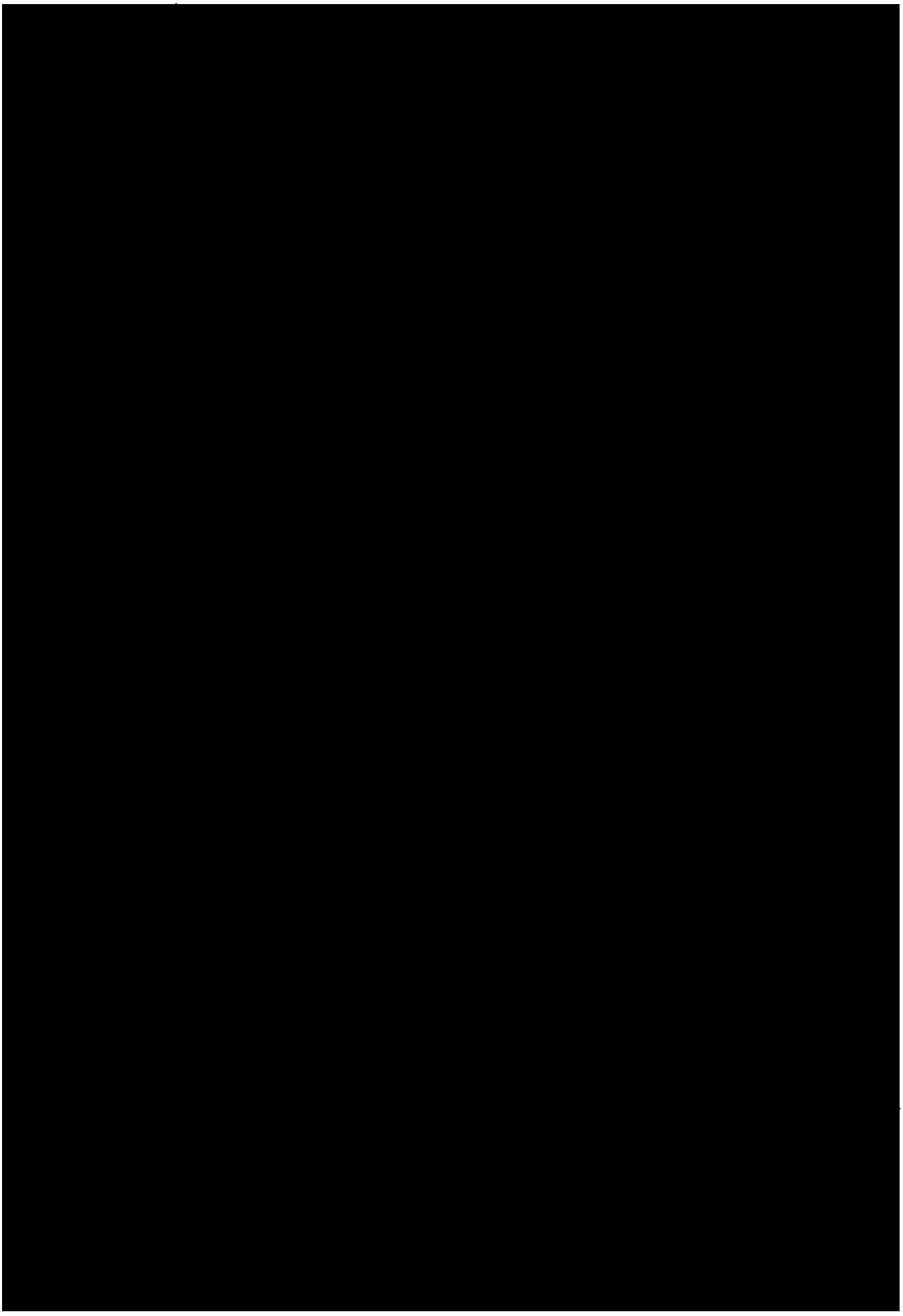
[redacted]

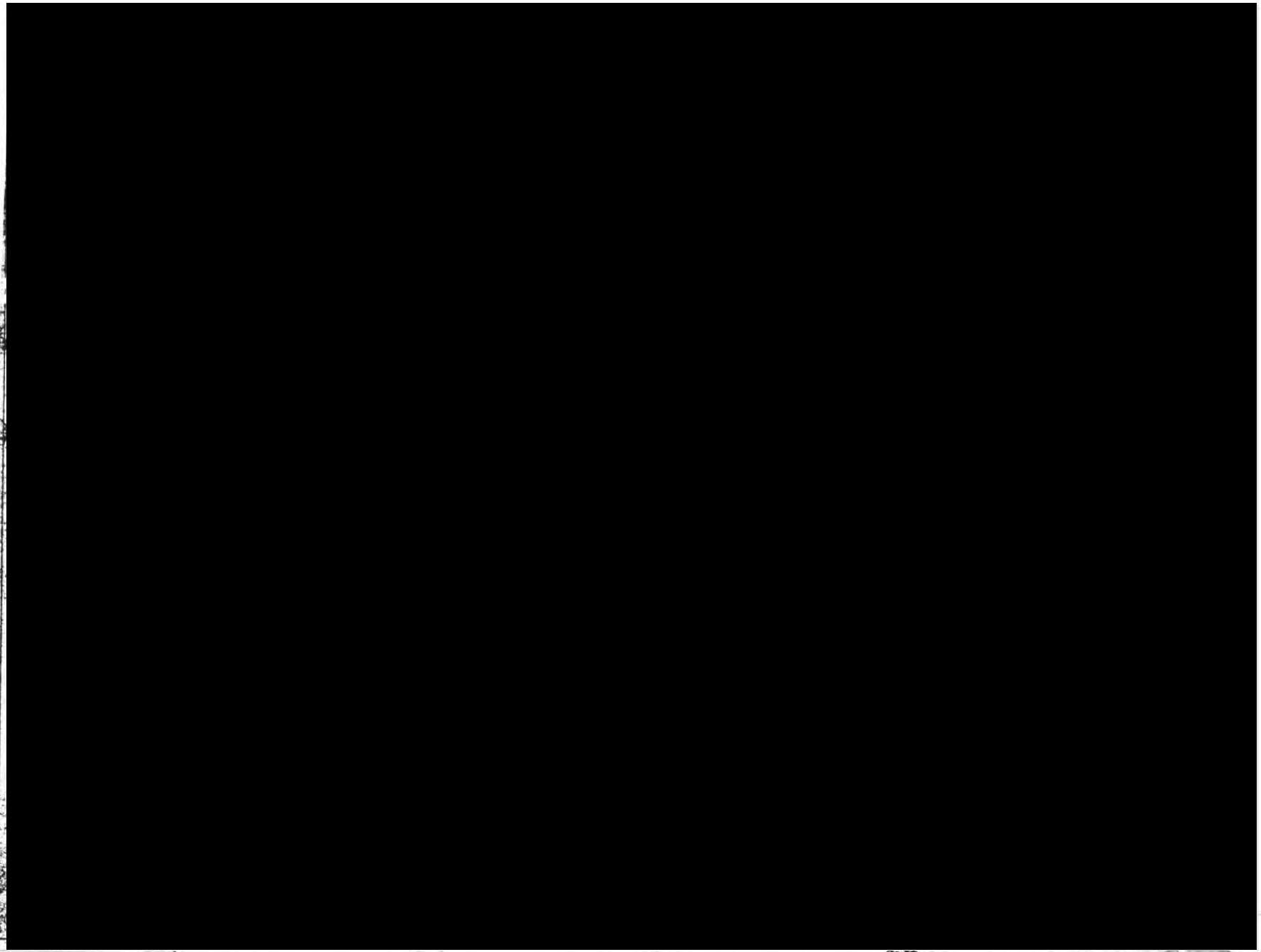
Roll Values

Land	**164838**
Structure	**285722**
Fixtures	**0**
Growing	**0**
Total Land and Improvements	**450560**
Manufactured Home	**0**
Personal Property	**0**
Homeowners Exemption	**0**
Other Exemption	**0**
Net Assessment	**450560**

Building Description(s)

Building Seq. Number	**1**
Unit Seq. Number	**0**
Building Code	**1**
Current Doc No.	**2017R0071800**
Number Of Units	**1**
Building Type	**Residence**
Building Square Footage	**1920**
Garage Square Footage	**0.00**
Unfinished Square Footage	
Year Built	**1960**
Bedrooms	**3**
Full Baths	**2**
Half Baths	**0**
Fireplaces	**1**
Pools	





QUO WARRANTO

Resolution of Disputes -- Right to Public Office

1990

California Attorney General's Office

OPINION UNIT – P.O. BOX 944255, SACRAMENTO, CA 94244-2550

Table of Contents

Table of Authorities

Table of Authorities
(Continued)

Page

Cases (continued)

Table of Authorities
(Continued)

Table of Authorities
(Continued)

Table of Authorities
(Continued)

Page

Other Authorities

I

HISTORY AND BACKGROUND OF THE QUO WARRANTO PROCEEDING

Quo warranto (Latin for "by what authority") is a legal action most typically brought to resolve disputes concerning the right to hold public office or exercise a franchise. California law provides that the action may be brought either by the Attorney General or by others acting with the consent of the Attorney General.

Quo warranto actions—which in almost all instances provide the only method to challenge a claim to public office—have proven to be an effective means of preserving the integrity of public office while minimizing the threat of unlimited litigation for those holding office. Courts have held that quo warranto is a "plain, speedy and adequate" remedy for this purpose.

A. Early History

Quo warranto was originally used as a writ filed by early English monarchs to challenge claims of royal subjects to an office or franchise supposedly granted by the crown. Wide use was made of quo warranto by King Edward I after the year 1274 to challenge local barons and lords who held lands or title on questionable authority. The independence of the barons had grown after they compelled the king to sign the Magna Carta, and the king's use of the writ helped to reassert regal power—and enhance royal wealth—at the expense of the barons, since many feudal charters could not be documented. (Baker, *An Introduction to English Legal History* (1979) pp. 125-126.) The king and the nobles compromised title disputes in the Statute of Quo Warranto of 1290.

Their ongoing struggle both strengthened central government in a time when nation-states were being formed and promoted the growth of due process and individual freedom. Formal authority to initiate a quo warranto action was transferred to the Attorney General by King Henry VIII in a 16th Century court reform measure intended to streamline the action. (*Ibid.)*

In 1683, King Charles II relied on the Crown's quo warranto powers to dramatically curtail the growing independence of the City of London. The following year, in an equally dramatic use of a related proceeding known as scire facias, the king revoked the charter of the province of Massachusetts because it had founded Harvard College without royal authority. After this period, private and irregular jurisdictions in England were generally abolished by acts of Parliament, and quo warranto emerged in its modern form in 1710 in the reign of Queen Anne. (See *Internat. Assn. of Fire Fighters v. City of Oakland* (1985) 174 Cal.App.3d 687, 695-96; quoting High, Extraordinary Legal Remedies (3rd ed. 1896) pp. 544-556.)

B. Modern Use of Quo Warranto

In California, the 1872 code formally abolished the equitable writs of scire facias and quo warranto, substituting a statutory action by which the Attorney General, acting in the name of the people of the State, could bring an action against any person who unlawfully usurped, intruded into, held or exercised any public office or franchise. (*People v. Dashaway Association* (1890) 84 Cal. 114, 118; see generally Note (1963) 15 Hastings L.J. 222.)

References to quo warranto writs in the state constitution that were added after 1872 caused some confusion, but the constitution was amended in 1966 to delete any reference to the writ. The procedure is established solely as an action at law authorized by statute. Those procedures are contained in sections 803-811 of the Code of Civil Procedure and in sections 1 through 11 of the California Code of Regulations.

Although "quo warranto," the customary name for the action, is no longer found in the statute itself—the statutory title is "Actions for the Usurpation of an Office or Franchise"—for reasons of history and convenience the term continues to be widely employed in court decisions, treatises, and at least one collateral statute. (See generally 8 Witkin, California Procedure (3d ed. 1985) Extraordinary Writs, § 6, p. 645; Gov. Code, § 1770, subd. (b).) Thus, what began as a legal device used by monarchs to centralize their authority has evolved into a statutory proceeding to determine whether holders of public office or franchises are legally entitled to hold that office or exercise those powers.

II

NATURE OF THE REMEDY OF QUO WARRANTO

With one exception, the action authorized by section 803 of the Code of Civil Procedure that we call quo warranto may be brought only by the Attorney General, in the name of the people of the State, or by a private party acting with the Attorney General's consent.

It may be brought against:

A. Any person who usurps, intrudes into, or unlawfully holds or exercises any public office or franchise; or

B. Any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise within California. (Code Civ. Proc., § 803.)

The remedy of quo warranto is vested in the people, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants. It is the Attorney General who must control the suit. No matter how significant an interest an individual or entity may have, there is no independent right to sue. (*Oakland Municipal Improvement League v. City of Oakland* (1972) 23 Cal.App.3d 165, 170.) This requirement is jurisdictional. The court may not hear the action unless it is brought or authorized by the Attorney General. (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 633.)

The sole exception to the Attorney General's exclusive control of quo warranto actions is found in section 811 of the Code of Civil Procedure. The section authorizes the legislative bodies of local governmental entities to maintain an action against those holding franchises within their jurisdiction, and the Attorney General's consent is not required. The section requires that the franchise be of a type authorized by the local jurisdiction. (*San Ysidro Irrigation Dist. v. Super. Ct.* (1961) 56 Ca1.2d 708, 716.) This section was added by the Legislature in 1937 because local government was viewed as able to respond more effectively to this type of local problem. (See Note, (1963) 15 Hastings L.J. 199, 224; (1937) 11 So.Cal.L.R. 1, 50-51.)

Although the Attorney General occasionally brings a quo warranto action on the initiative of his or her office, or at the direction of the Governor, usually the action is

filed and prosecuted by a private party who has obtained the Attorney General's consent, or "leave to sue," in quo warranto. The private party who obtains leave to sue is termed the "relator." The action is brought in the name of the People of the State of California "on the relation of" the private party who has been granted permission to bring the action. The addition of a relator does not convert a quo warranto into a private action. The matter is always brought and prosecuted on behalf of the public. (*People v. City of Huntington Beach* (1954) 128 Cal.App.2d 452, 455.)

Even though permission has been granted to a private party to sue, the action does not lose its public character. The Attorney General remains in control of the action and, for instance, may dismiss it over the objection of the private party bringing it or refuse to permit appeal of an adverse ruling. (*People v. Petroleum Rectifying Co.* (1937) 21 Cal.App.2d 289, 291-292.)

Quo warranto is intended to prevent a continuing exercise of an authority unlawfully asserted, and is not appropriate to try moot or abstract questions. Where the alleged usurpation has terminated, quo warranto will be denied. (*People v. City of Whittier* (1933) 133 Cal.App. 316, 324; 25 Ops.Cal.Atty.Gen. 223 (1955).) By the same token, because quo warranto serves to end a continuous usurpation, no statute of limitations applies to the action. (*People v. Bailey* (1916) 30 Cal.App. 581, 584, 585.)

The remedies available in a quo warranto judgment do not include correction or reversal of acts taken under the ostensible authority of an office or franchise. Judgment is limited to ouster or forfeiture (and possibly a fine or damages), and may not be imposed

retroactively upon prior exercise of official or corporate duties.[1] (*Ensher, Alexander & Barsoom, Inc. v. Ensher* (1965) 238 Cal.App.2d 250, 255.)

Normally, quo warranto is the *exclusive* remedy in cases in which it is available. (*Cooper v. Leslie Salt Co., supra,* 70 Cal.2d at pp. 632-633.) Title to an office may not be tried by mandamus, by injunction, by writ of certiorari, or by petition for declaratory relief. (*Stout v. Democratic County Central Com.* (1952) 40 Cal.2d 91 (mandamus); *Internat. Assn. of Fire Fighters v. City of Oakland, supra,* 174 Cal.App.3d at pp. 693-694 (injunction); *Hull v. Super. Ct.* (1883) 63 Cal. 174, 177 (writ of certiorari); *Cooper v. Leslie Salt Co., supra,* 70 Cal.2d at 634 (declaratory relief).)[2]

On the other hand, the existence of other remedies does not prevent the state from bringing a quo warranto proceeding. (*Citizens Utilities Co. v. Super. Ct.* (1976) 56 Cal.App.3d 399, 405; 18 Ops.Cal.Atty.Gen. 7 (1951).) For example, the fact that criminal proceedings may be brought against a corporation does not prevent the state from initiating ouster proceedings through quo warranto. (*Id.* at 406; 22 Ops.Cal.Atty.Gen. 122 (1953).) Quo warranto tries *title* to public office; it may not be used to remove an incumbent for *misconduct* in office. (*Wheeler v. Donnell* (1896) 110 Cal. 655.)

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[1] The Superior Court is authorized, however, to award damages in favor of a rightful claimant to an office (Code Civ. Proc. § 807) and to impose a fine of up to $5,000 (Code Civ. Proc., § 809). (See § V, *infra*.)

[2] The courts have sanctioned the determination of the right to hold office in other proceedings where that action is considered incidental to the main relief of the action. (See discussion, *infra,* pp. 8-9.)

In the past, quo warranto proceedings were frequently utilized to challenge the validity of completed annexation proceedings.[3] Mandamus pursuant to Code of Civil Procedure section 1085 was used to challenge incomplete annexations. (See generally *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 271; *Hills for Everyone v. Local Agency Formation Com.* (1980) 105 Cal.App.3d 461, 470.) Today, a statutory procedure exists to challenge such completed annexations,[4] and quo warranto, although still available, is rarely utilized.

At present, the most common application of the quo warranto procedure is adjudicating the right of individuals to hold public office. A "public" office is one in which "the incumbent exercises some of the sovereign powers of government." (*Stout v. Democratic County Central Com., supra*, 40 Cal.2d at 94.) Not all offices are "public" offices. In *Stout*, the court held that a party "committeeman" exercises the powers of a political party, not the sovereign power of the public. (*Ibid.*)

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[3] See also 36 Ops.Cal.Atty.Gen. 37, 42 (1960) [leave to sue granted to test validity of annexation proceedings]; 35 Ops.Cal.Atty.Gen. 214, 216 (1960) [leave to sue granted to test validity of annexation proceedings]; 35 Ops.Cal.Atty.Gen. 123, 124 (1960) [leave to sue granted to test validity of annexation proceedings]; 28 Ops.Cal.Atty.Gen. 369, 373 (1956) [leave to sue granted to determine validity of city's incorporation proceedings]; 27 Ops.Cal.Atty.Gen. 33, 35 (1956) [leave to sue granted to test title to office]; 25 Ops.Cal.Atty.Gen. 332, 341 (1955) [leave to sue granted to test legality of formation of water district]; 24 Ops.Cal.Atty.Gen. 146, 151-152 (1954) [leave to sue granted to test legality of annexation]; 22 Ops.Cal.Atty.Gen. 113, 121 (1953) [leave to sue granted to test alleged unlawful exercise of a corporate franchise]; 20 Ops.Cal.Atty.Gen. 249, 251 (1952) [leave to sue granted to determine validity of annexation proceeding]; 20 Ops.Cal.Atty.Gen. 93, 94 (1952) [leave to sue granted to determine validity of annexation proceeding]; 17 Ops.Cal.Atty.Gen. 179, 181 (1951) [leave to sue granted to test right to hold office of city judge]; 17 Ops.Cal.Atty.Gen. 149, 150 (1951) [leave to sue granted to test legality of formation of water district]; 17 Ops.Cal.Atty.Gen. 136, 138 (1951) [leave to sue granted to test legality of annexation proceedings]; and 11 Ops.Cal.Atty.Gen. 246, 247 (1948) [leave to sue granted to test legality of annexation proceedings].

[4] See Gov. Code, § 56103; Code Civ. Proc., §§ 860 et seq.

While quo warranto is regarded as the exclusive remedy to try title to public office, under certain circumstances a court will consider title to an office in a mandamus proceeding under section 1085 of the Code of Civil Procedure when title is "incidental" to the primary issue to be resolved by the action. Generally, this occurs when a de facto officer brings an action such as mandamus to recover some incident of office, such as salary, and a determination as to whether the petitioner is entitled to recover the incident of office must necessarily be preceded by a ruling as to whether the petitioner is entitled to the office. (See *Klose v. Super. Ct.* (1950) 96 Cal.App.2d 913 and cases cited therein.) The court must decide whether title may be decided in the action "incidentally" to the ostensible primary issue. (*Stout v. Democratic County Central Com., supra*, 40 Cal.2d at 94; see also *Lungren v. Deukmejian* (1988) 45 Cal.3d 727.)[5]

III

APPLICATION TO THE ATTORNEY GENERAL FOR LEAVE TO SUE IN QUO WARRANTO

Application to the Attorney General for leave to sue in quo warranto may be made by a private person or local agency pursuant to the rules and regulations issued by the Attorney General. (C.C.R., tit. 11, §§ 1-11, Appendix B.) It is unusual for the Attorney General's Office to initiate such suits; most are brought by private parties after consent has been granted.

[5] In *Lungren*, the California Supreme Court held that mandamus is not available to a claimant to public office unless the claimant has a present interest in the office and a present right to assume it. (*Lungren, supra*, 45 Cal.3d at pp 731-732.)

The procedure must begin with service by the proposed relator (or that person's attorney) on the proposed defendant, and subsequently on the Attorney General, of an application for leave to sue in quo warranto. This application must include the following:

a. A verified proposed complaint prepared for the signature of the Attorney General, a deputy attorney general, and the attorney for the relator, as attorneys for the plaintiff, and one copy of the proposed complaint.

b. A verified statement of facts necessary to rule on the application.

c. Points and authorities in support of the application.

d. Copy of the notice to the proposed defendant of the filing of the application giving the proposed defendant 15 days to appear and show cause why leave to sue should not be granted. (Twenty days are permitted if the notice is served outside the county in which the action is brought.)

e. Proof of service of all of the above documents upon the proposed defendant.

Upon receipt of this letter and the accompanying documents, the Attorney General's Office sends a letter of acknowledgment to the proposed relator with a copy to the proposed defendant.

The proposed defendant is allowed 15 or 20 days, depending upon where service is made, to file a written response with the Attorney General opposing the application. This response should include the proposed defendant's verified statement of the facts, points and authorities in support of the opposition, and proof of service of these documents upon the proposed relator.

The proposed relator is allowed 10 days to reply.

These times may be shortened or extended as provided in sections 3 and 4 of the regulations. In addition, the deputy attorney general assigned to review the application papers may, in his or her discretion, request any further information, points and authorities, or discussion deemed necessary for the office's consideration of the application.

A proposed relator may request that the complaint be filed in court immediately. Under section 10 of the Code of Regulations this may be done in unusual cases upon a sufficient showing of urgent necessity. In most cases where this is allowed, the urgent necessity presented is the imminent running of time under a statute of limitations on a collateral issue (there is no statute of limitations on quo warranto itself) which could make later filing legally or practically impossible.

Immediate filing may also be allowed in cases where there is a need to preserve the status quo, pending a decision on the application by the Attorney General. In all cases where such a request is granted, the practice of the Attorney General's Office is to require that the proposed relator file a document, entitled "Provisional Leave to Sue," in court with the complaint. The complaint and the Provisional Leave to Sue must be signed by the Attorney General or a deputy. The relator may take no further action in court (except to have the summons issued) until the Attorney General's Office has ruled on the application for leave to sue.

In examining applications for leave to sue in quo warranto, the Attorney General's Office requires that all facts to be alleged in the complaint be set forth in detail. While

broad, generalized allegations may be legally sufficient for many types of pleadings in California, the Attorney General's Office believes that quo warranto litigation is expedited by immediately placing all of the facts before the defendant and the court, and therefore requires great specificity in factual allegations. Moreover, such alleged facts must be based upon direct evidence, not on information and belief. (27 Ops.Cal.Atty.Gen. 249, 253 (1956).) The California Supreme Court has upheld the Attorney General's refusal to permit quo warranto actions unless the supporting affidavits contain factual allegations so specific that perjury charges may be brought if any material allegation is false. (*Lamb v. Webb* (1907) 151 Cal. 451, 455-456.) This same certainty has also been required in the complaints. In addition, the Attorney General's Office frequently requires documents, maps, etc., to be submitted for examination.

IV

CONSIDERATION AND DETERMINATION BY THE ATTORNEY GENERAL ON THE APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO

A. Criteria Utilized by the Attorney General

After the proposed relator and the proposed defendant have submitted all materials, the application is taken under consideration by the Attorney General's Office. In deciding whether to grant leave to sue, the primary issue considered by the office is whether a public purpose will be served. As stated in 39 Ops.Cal.Atty.Gen. 85, 89 (1962):

> "In deciding whether to grant or deny leave to sue, the Attorney General must not only consider the factual and legal

> problems involved, but also the overall public interest of the people of this state . . ."

Or, as stated in 35 Ops.Cal.Atty.Gen., *supra,* at page 124:

> "This office has the duty to conduct a preliminary investigation of proposed quo warranto litigation to determine whether a substantial issue of fact or law exists which should be judicially determined (11 Ops.Cal.Atty.Gen. 182, 183; 27 Ops.Cal.Atty.Gen. 33, 35), and leave should be granted only if there is some public interest to be served. (*People v. Bailey*, 30 Cal.App. 581, 584.)"

(See also 67 Ops.Cal.Atty.Gen. 151 (1984); 40 Ops.Cal.Atty.Gen. 78, 81 (1962); 37 Ops.Cal.Atty.Gen. 172, 175 (1961).) The "public purpose" requirement has been interpreted as requiring "a substantial question of law or fact which calls for judicial decision." (67 Ops.Cal.Atty.Gen., *supra*, at p. 153; 25 Ops.Cal.Atty.Gen. 237, 240 (1955).)

The office will not, however, examine the likelihood of either party prevailing in court. As stated at 12 Ops.Cal.Atty.Gen. 340, 341 (1949):

> "[I]n acting upon as application for leave to sue in the name of the people of the State, it is not the province of the Attorney General to pass upon the issues in controversy, but rather to determine whether there exists a state of facts or question of law that should be determined by a court in an action in quo warranto; that the action of the Attorney General is a preliminary investigation, and the granting of the leave is not an indication that the position taken by the relator is correct, but rather that the question should be judicially determined and that quo warranto is the only proper remedy."

That said, it should be noted that the office will require that the party seeking leave to sue make a showing of a substantial likelihood of success. Although no final judgment will be made by the office on the merits, a strong prima facie showing must be made

before the office will permit the disruptive effect on governmental operations which accompanies most quo warranto actions. Courts have required that ambiguities concerning potential disqualification from office should be resolved in favor of continued eligibility. (*Helena Rubenstein Internat. v. Younger* (1977) 71 Cal.App.3d 406, 418.) Thus, in determining whether it is in the public interest to permit a quo warranto action to go forward, the Attorney General's Office addresses three fundamental questions:

1. Is quo warranto the proper remedy to resolve the issues which are presented?

2. Has the proposed relator raised a substantial question of law or fact?

3. Would the public interest be served by judicial resolution of the question?

All three questions must be resolved in the affirmative in order for this office to grant leave to sue.

B. Discretion of the Attorney General in Granting or Denying Leave to Sue

The statutes grant the Attorney General's Office broad discretion in its determination of proposed quo warranto actions. Code of Civil Procedure section 803 provides that the Attorney General "may" bring the action on his or her own information or on complaint of a private party, and it "must" be brought when the Attorney General "has reason to believe" that the appropriate conditions exist or when directed to do so by the Governor. The use of the word "must" in the latter portion of the provision does not create a mandatory duty due to the qualifying language that the Attorney General must have "reason to believe" that the appropriate conditions exist. (8 Witkin, Cal. Procedure

(3d ed. 1985) Extraordinary Writs, § 7 at p. 646; *Internat. Assn. of Fire Fighters v. City of Oakland*, *supra*, 174 Cal.App.3d at 697.) Hence, the Attorney General "has discretion to refuse to sue where the issue is debatable." (*Internat. Assn. of Fire Fighters*, *supra*, at p. 697.)

Although a writ of mandamus may theoretically be issued to compel the issuance of leave to sue where the Attorney General has abused his or her discretion, such a writ is available only where it may be shown that the refusal to issue leave to sue was "extreme and clearly indefensible." (*Lamb v. Webb*, *supra*, 151 Cal at 454; *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 645.) There is no instance in California law where a court has compelled the Attorney General to grant leave to sue in quo warranto.

In *City of Campbell*, the proposed relator contended that the Attorney General had abused his discretion in denying leave to sue since a substantial issue of law had been presented. The court firmly rejected this proposition, reaffirming the importance of the Attorney General's discretionary review:

> "To hold that the mere presentation of an issue forecloses any exercise of discretion would mean, in effect, that, contrary to the holding in the Lamb case, the Attorney General could exercise no discretion. The crystallization of an issue thus does not preclude an exercise of his discretion; it causes it . . . [¶] The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party's right to it cannot be absolute; the public interest prevails. The presence of an issue here does not abort the application of such discretion; the issue generates the discretion. Only in the event of an extreme abuse of the discretion should the courts annul the Attorney General's decision." (197 Cal.App.2d at 650-651.)

In *International Association of Fire Fighters*, the court in dicta suggests that where a proposed relator has an individual right distinct in kind from the right of the

general public enforceable by an action in the nature of quo warranto, a court should review the discretion of the Attorney General according to an "arbitrary, capricious, or unreasonable" standard rather than the "extreme and clearly indefensible" standard enunciated in the *Lamb v. Webb* and *City of Campbell* cases. (174 Cal.App.3d at 697-698.) It is the opinion of this office that the dicta set forth in *International Association of Fire Fighters* concerning the standard by which courts review the discretion of the Attorney General is not a correct statement of California law. The Supreme Court's ruling on the matter, first issued in 1907 in the *Lamb* case, continues to be the controlling doctrine in this state. The *International Association* court based its reasoning upon the theory that where a private interest is involved, the privilege to be heard should not be lodged in a public official. The court found this theory consistent with the rule in other states. It must be remembered, however, that California law differs from other states in that regardless of whether a private interest is at stake, the cause of action is always carried forward in the name of and on behalf of the public. (*People v. Milk Producers Assn.* (1923) 60 Cal.App. 439, 442; *People v. San Quentin Prison Officials* (1963) 217 Cal.App.2d 182, 183.) While a different standard may be appropriate in some states depending upon whether the cause of action concerns private, as well as the public's, interest, there is no basis for such a distinction in California law.

C. The Decision of the Attorney General

The decision to either grant or deny leave to sue is released following its approval by the Attorney General. Until 1963, all such decisions were published in the opinions of

Attorney General of California. Currently, these decisions are either published as formal opinions or issued as letters, depending on their precedential value.

Copies will be sent to each party. If leave to sue has been granted, the Attorney General's Office will also issue a document entitled "Leave to Sue" that the proposed relator must file with the complaint, unless a provisional leave to sue has previously been granted under section 10 of the regulations. The relator then causes the summons to be served and proceeds with the lawsuit.

Before any complaint may be filed, and unless this requirement is waived or otherwise modified by the Attorney General, the proposed relator must file with the Attorney General's Office a $500 undertaking payable to the State of California. (*People v. Sutter St. Ry. Co*. (1897) 117 Cal. 604, 612; Code Civ. Proc., § 810; C.C.R., tit. 11, §§ 6, 28.) This undertaking is to protect the state from all costs, damages, or expenses which might be recovered against the plaintiff in the action. The Attorney General's Office requires the undertaking to be a corporate surety with the bond cosigned by the relator as principal.

V

PROSECUTION OF THE QUO WARRANTO ACTION

The action remains under the control of the Attorney General's Office. The Attorney General retains the discretion to approve all court filings in advance and to require that the complaint (and subsequent pleadings) be modified in certain particulars or that the action be dismissed, and may refuse to permit an appeal from an adverse

ruling. Copies of all documents filed must be provided to the Attorney General. (*People v. City of Huntington Beach, supra*, 128 Cal.App.2d at 455; C.C.R., tit. 11, §§ 7, 8, 9, 11.)

Quo warranto proceedings are considered civil actions and are governed by the applicable provisions of the Code of Civil Procedure. (*People v. City of Richmond* (1956) 141 Cal.App.2d 107, 117.) With respect to the burden of proof, however, the common law rule reverses the plaintiff's customary burden and requires the defendant to establish the lawfulness of holding the office or franchise. (*People v. City of San Jose* (1950) 100 Cal.App.2d 57, 59; *People v. Hayden* (1935) 9 Cal.App.2d 312, 313.) Although this rule has never been formally changed, it has been suggested that under the statutory proceeding the state must prove that rights claimed under a disputed franchise have actually been exercised. Where the exercise of those rights is not at issue and only the right to exercise them is challenged, however, the common law rule applies and the defendant has burden of establishing his or her right to the franchise. (See 53 Cal.Jur.3d (1978) Quo Warranto, § 29.)

Judgment against a defendant for usurping, intruding into, or unlawfully holding an office or franchise serves to oust the defendant from the office or franchise. (Code Civ. Proc., § 809.) The defendant must pay costs, and the court in its discretion may impose a fine of up to $5,000, which must be paid into the State Treasury. (*Id.*) Damages may be awarded to a successful relator who claims entitlement to the office unlawfully held by the defendant. (Code Civ. Proc., § 807.) The court may also order that such a relator be restored to the office. (Code Civ. Proc., § 805; *People v. Banvard* (1865) 27 Cal. 470, 475.)

Bridget Cornell

From: Dennis Weaver <dennis.weaver@pressmail.ch>
Sent: Thursday, April 28, 2022 9:30 PM
To: Joanne Marchetta; Marja Ambler; John Marshall; Katherine Hangeland
Cc: Bridget Cornell
Subject: Verizon/Tahoe Seasons New Telecommunications Facility; 3901 Saddle Road, City of South Lake Tahoe, El Dorado County, California; Assessor's Parcel Number 028-231-001, TRPA File Number ERSP2021-0808
Attachments: mao-wallace_obey_attn.pdf; Acosta v City of Costa Mesa, 718 F.3d 800 (2013).pdf; Cohen v California, 403 U.S. 15 (1971).pdf

Hey TRPA & City Council! WTF?

Oh, *hell no*:


OBEY
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禁止通行

No more Cell Towers!!!

This shit has got to stop. Tamara Wallace and the TRPA are dangerous and are all god damn power hungry liars! You all make false statements whenever you get caught with your fatuous hands in the cookie jar. Anyone who takes you for your word is a fool.

Dennis Weaver


OBEY
通行
禁止通行
禁止通行
禁止通行

718 F.3d 800
United States Court of Appeals,
Ninth Circuit.

Benito ACOSTA, Plaintiff–Appellant,
v.
CITY OF COSTA MESA; Allan Mansoor, Mayor of the City of Costa Mesa, in his official and individual capacities, Defendants–Appellees, John Hensley, Chief of Police, Costa Mesa Police Department; David Andersen; David DeHuff; John Doezie; Bryan Glass; Daniel Guth; David Makiyama; Jeff Tobin; Derek Trusk; in their official and individual capacities, Defendants.

No. 10–56854.
|
Argued and Submitted July 9, 2012.
|
Filed May 3, 2013.

Synopsis

Background: Speaker at city council meeting brought action against the mayor, the chief of police, the city, and certain individual police officers, challenging city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior, and alleging he was unreasonably and unlawfully seized after speaking at a meeting. The United States District Court for the Central District of California, David O. Carter, P.J., granted in part defendants' motion to dismiss, and granted in part and denied in part defendants' motion for summary judgment, 2008 WL 5103205, and, subsequently, a jury returned a verdict for defendants. Speaker appealed. The Court of Appeals, Tallman, Circuit Judge, 694 F.3d 960,affirmed in part and reversed in part, but, subsequently, granted a petition for panel rehearing.

Holdings: On panel rehearing, the Court of Appeals held that:

[1] city ordinance was facially overbroad in violation of the First Amendment;

[2] unconstitutional portions of the ordinance were not severable;

[3] officers were entitled to qualified immunity on speaker's First Amendment claims;

[4] officers were entitled to qualified immunity on speaker's unlawful seizure and arrest claims;

[5] officers did not use excessive force against speaker;

[6] any error in the district court's evidentiary rulings did not prejudice speaker; and

[7] substantial evidence supported jury's verdict that the mayor neutrally and constitutionally applied the ordinance to speaker.

Affirmed in part and reversed in part.

West Headnotes (49)

[1] **Federal Courts** Dismissal or nonsuit in general

Court of appeals reviews a district court's dismissal of a claim de novo.

[2] **Federal Courts** Statutes, regulations, and ordinances, questions concerning in general

Court of appeals analyzes the constitutionality of a statute de novo.

[3] **Constitutional Law** Substantial impact, necessity of

A court will invalidate a statute as overbroad under the First Amendment, if a substantial amount of its applications are unconstitutional, judged in relation to its plainly legitimate sweep. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[4] **Constitutional Law** Substantial impact, necessity of

Although the concept of substantial overbreadth is not readily reduced to an exact definition, it generally means that a court will not invalidate a statute on its face unless there is a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the court. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[5] **Constitutional Law** Government Meetings and Proceedings

An ordinance that governs the decorum of a city council meeting is not facially overbroad under the First Amendment if it only permits a presiding officer to eject an attendee for actually disturbing or impeding a meeting; however, actually disturbing or impeding a meeting means actual disruption of the meeting, as a municipality cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance. U.S.C.A. Const.Amend. 1.

5 Cases that cite this headnote

[6] **Constitutional Law** Overbreadth in General

The first step in an overbreadth analysis under the First Amendment is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[7] **Constitutional Law** Presumptions and Construction as to Constitutionality

Statutes Plain Language; Plain, Ordinary, or Common Meaning

Statutes Statute as a Whole; Relation of Parts to Whole and to One Another

Under California law, a court must give a statute's language its usual, ordinary import and accord significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose; in doing so, a court must also apply two principles: first, the enactment may be validated if its terms are reasonably susceptible to an interpretation consistent with the Constitution, and, second, a court should construe the enactment so as to limit its effect and operation to matters that may be constitutionally regulated or prohibited.

1 Cases that cite this headnote

[8] **Constitutional Law** Government Meetings and Proceedings

Municipal Corporations Rules of procedure and conduct of business

Municipal Corporations Public peace and order

Under California law, city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior allowed the city to prohibit non-disruptive speech that was subjectively "impertinent," "insolent," or essentially offensive, and therefore the ordinance was facially overbroad in violation of the First Amendment; only the words "disorderly" and "disruptive" were qualifiers that referred to actual disruption of the city proceedings, and the third qualifier merely prohibited "insolent" behavior, and that type of expressive activity could, and often likely would, fall well below the level of behavior that actually disturbed or impeded a city council meeting. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[9] **Constitutional Law** Government Meetings and Proceedings

Municipal Corporations Rules of procedure and conduct of business

City ordinance provision prohibiting the making of "personal, impertinent, profane, insolent or slanderous remarks" at city council meetings was an unconstitutional prohibition on speech, absent a readily susceptible narrowing construction. U.S.C.A. Const.Amend. 1.

[10] **Statutes** Undefined terms

Statutes Dictionaries

Under California law, when terms are not defined within a statute, they are accorded their plain and ordinary meaning, which can be deduced through reference sources such as general usage dictionaries.

[11] **Statutes** Conjunctive and disjunctive words

California courts follow the common rule of statutory construction that gives disjunctive and distinct meaning to items separated by the word "or."

1 Cases that cite this headnote

[12] **Constitutional Law** Offensive, vulgar, abusive, or insulting speech

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. U.S.C.A. Const.Amend. 1.

[13] **Statutes** Effect of Partial Invalidity; Severability

California courts look to what the intentions were of the enacting body at the time of enactment to determine whether volitional severability is met.

[14] **Municipal Corporations** Effect of partial invalidity

Under California law, it was not clear that enacting body's attention was sufficiently focused on the purpose of only prohibiting disruptive conduct such that city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior would have still been passed in its constitutional form, e.g., if it only prohibited disruptive conduct, and, therefore, ordinance could not pass the test for volitional severability, so as to allow the unconstitutional provisions of the statute prohibiting non-disruptive conduct to be severed; use of appropriate qualifying language by the city in other ordinances demonstrated that the city knew how to enact an ordinance aimed at preventing actual disturbances of council meetings, and the city's choice to go further in the ordinance at issue indicated that the city intended those additional prohibitions to be a functional aspect of the ordinance. U.S.C.A. Const.Amend. 1.

[15] **Statutes** Effect of Partial Invalidity; Severability

Under California law, text to be severed from an unconstitutional portion of a statute passes the test for volitional severability if it can be said with confidence that the enacting body's attention was sufficiently focused upon the parts to be validated so that it would have separately considered and adopted them in the absence of the invalid portions.

[16] **Statutes** Effect of Partial Invalidity; Severability

Under California law, unconstitutional text in a statute is grammatically or mechanically severable only when it constitutes a physically separate section of the proposition.

[17] **Statutes** Effect of Partial Invalidity; Severability

Under California law, grammatical severability does not permit a single word to be excised from the middle of a clause or phrase.

[18] **Municipal Corporations** Effect of partial invalidity

Under California law, grouping of individual words, "personal, impertinent, profane, insolent," was not grammatically severable from surrounding text in city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior; the grouping of individual words did not form a complete grammatical unit.

1 Cases that cite this headnote

[19] **Municipal Corporations** Effect of partial invalidity

Under California law, unconstitutional provisions of city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior were not functionally severable from the ordinance; one of the purposes of the ordinance was to prohibit certain classes of expressive speech by persons addressing the city council, even if it did not disturb or disrupt the conduct of the meeting, and excising the unconstitutional terms from the ordinance would remove non-disruptive, non-disturbing speech from the scope of the ordinance's operation. U.S.C.A. Const.Amend. 1.

[20] **Statutes** Effect of Partial Invalidity; Severability

Under California law, unconstitutional text is functionally severable from a statute if it is not necessary to the ordinance's operation and purpose.

[21] **Statutes** Effect of Partial Invalidity; Severability

Under California law, if a statute does not meet any one criterion for severability, then a court may not sever text from a statute.

1 Cases that cite this headnote

[22] **Constitutional Law** Facial invalidity

Constitutional Law Invalidity as applied

Facial and as-applied challenges to statutes can be viewed as two separate inquiries; if a statute is found facially unconstitutional on appeal, then the district court's determination that the statute was applied in a constitutional manner may remain undisturbed.

2 Cases that cite this headnote

[23] **Constitutional Law** First Amendment in General

Standing for a First Amendment facial challenge does not depend on whether the complainant's own activity is shown to be constitutionally privileged. U.S.C.A. Const.Amend. 1.

[24] **Municipal Corporations** Application of principle of agency to municipalities

Under California's Tort Claims Act public entities are immune where their employees are immune, except as otherwise provided by statute. West's Ann.Cal.Gov.Code § 815.

1 Cases that cite this headnote

[25] **Federal Courts** Immunity

A court of appeals reviews de novo a district court's decision to grant summary judgment on the basis of qualified immunity.

[26] **Municipal Corporations** Liability of officers or agents

Public Employment State, local, and other non-federal personnel in general

When a city council enacts an ordinance, officers are entitled to assume that the ordinance is a valid and constitutional exercise of authority; if an officer reasonably relies on the council's duly enacted ordinance, then that officer is entitled to qualified immunity.

6 Cases that cite this headnote

[27] **Civil Rights** Sheriffs, police, and other peace officers

It was objectively reasonable for police officers to believe that city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior was valid when they removed and later arrested a speaker at a city council meeting for violating the ordinance, and therefore the officers were entitled to qualified immunity on the speaker's § 1983 First Amendment claims, even though the ordinance was found to be facially unconstitutional under the First Amendment; city ordinance was duly promulgated by the proper process and was recognized as a valid portion of the city code, and strong arguments were presented for the constitutionality of the ordinance. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[28] **Civil Rights** Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct.

39 Cases that cite this headnote

[29] **Civil Rights** Government Agencies and Officers

Civil Rights Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

Assessing whether an official is entitled to qualified immunity is a two prong inquiry: under the first prong a court asks whether, taken in the light most favorable to the party asserting the injury, the facts alleged show the officer's conduct violated a constitutional right, and, under the second prong, a court examines whether the right was clearly established.

35 Cases that cite this headnote

[30] **Civil Rights** Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

For a right to be clearly established, such that a government official would not be entitled to qualified immunity for violating that right, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right; in other words, existing precedent must have placed the statutory or constitutional question beyond debate.

44 Cases that cite this headnote

[31] **Civil Rights** Sheriffs, police, and other peace officers

Probable cause existed to arrest speaker for violating city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior, and therefore officers were entitled to qualified immunity on speaker's claims arising from his seizure and arrest; violations of the ordinance were misdemeanors and a person in violation of the ordinance could be arrested, and the ordinance required every person addressing the council to comply with and obey the lawful orders or directions of the presiding officer, and the mayor first indicated that he did not want speaker to ask people to stand up in a show of support, but the speaker defiantly continued to encourage the audience to stand, and then the mayor called for a recess to end the speaker's disruptive behavior, and the speaker remained at the podium and continued to speak after the mayor called the recess. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

[32] **Arrest** Reasonableness; reason or founded suspicion, etc

Searches and Seizures Probable Cause

All seizures, except a narrowly defined intrusion such as the one in *Terry v. Ohio*, are reasonable only if the seizure is supported by probable cause. U.S.C.A. Const.Amend. 4.

5 Cases that cite this headnote

[33] **Arrest** Necessity for cause for arrest

To determine whether there was probable cause for a seizure, courts look to the totality of circumstances known to the arresting officers, to determine if a prudent person would have concluded that there was a fair probability that the defendant had committed a crime. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

[34] **Arrest** Evidence

While evidence supporting probable cause need not be admissible in court, it must be legally sufficient and reliable. U.S.C.A. Const.Amend. 4.

4 Cases that cite this headnote

[35] **Arrest** Use of force

When effecting an arrest, the Fourth Amendment requires that officers use only such force as is objectively reasonable under the circumstances. U.S.C.A. Const.Amend. 4.

2 Cases that cite this headnote

[36] **Arrest** Use of force

To determine whether the force used to effect an arrest was reasonable, courts must balance the nature and quality of the intrusion on the individual's Fourth Amendment interest against the countervailing governmental interests at stake; furthermore, the reasonableness must be judged from the perspective of a reasonable officer on the scene and allow for the fact that officers often have to make split-second decisions under evolving and uncertain circumstances. U.S.C.A. Const.Amend. 4.

[37] **Arrest** Use of force

Officers' conduct in grabbing speaker's arms and placing speaker in an upper body control hold to remove speaker from city council meeting for violating city ordinance governing public speaking at city council meetings was reasonable, and therefore did not amount to excessive force, considering the volatility of the situation and the presence of a large crowd of hostile demonstrators, and the fact that speaker did not leave the podium immediately. U.S.C.A. Const.Amend. 4.

[38] **Arrest** Use of force

Officers' conduct in holding speaker by his limbs to control him and prevent him from injuring an officer was not unreasonable or excessive in arresting speaker for violating city ordinance governing public speaking at city council meetings, where speaker was kicking and flailing his body to actively resist the police. U.S.C.A. Const.Amend. 4.

[39] **Federal Civil Procedure** Reception of Evidence

District court is accorded wide discretion in determining the admissibility of evidence under the Federal Rules; assessing the probative value of the proffered evidence, and weighing any factors counseling against admissibility is a matter first for the district court's sound judgment.

40 Cases that cite this headnote

[40] **Federal Courts** Evidence

To reverse a district court decision on the basis of an erroneous evidentiary ruling, a court of appeals must conclude that the error was prejudicial.

[41] **Federal Courts** Cumulative evidence; facts otherwise established

Any error in the admission of speaker's remarks before the city council at an earlier meeting, in which speaker called the mayor a "fucking racist pig," did not prejudice speaker in speaker's action, stemming from his arrest at a subsequent meeting, bringing an as-applied challenge to city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior; given the overwhelming evidence of speaker's actual disruptive behavior at the subsequent meeting and because the jury instructions as given included limitations on how pure speech could not be used to support a finding that speaker was actually disruptive, there was no reason to believe that the outcome of trial was affected by the admission of the evidence. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[42] **Federal Courts** Instructions

A court of appeals reviews a district court's rejection of a proposed jury instruction for an abuse of discretion.

[43] **Federal Courts** Instructions

Any error in instructing the jury in a civil case does not require reversal if it is harmless.

1 Cases that cite this headnote

[44] **Federal Courts** Failure or refusal to instruct; modification of request

Any error by the district court in rejecting speaker's suggested limiting jury instruction that evidence of speaker's speech or conduct at a previous city council meeting could not be considered for the purpose of proving that speaker was disruptive and that he acted in conformity with that character at a subsequent meeting was harmless, in speaker's action, stemming from his arrest at the subsequent meeting, bringing an as-applied challenge to city ordinance making it a misdemeanor for members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior; district court provided an instruction that made the distinction between pure speech and speech that accompanied conduct, and, considering the jury instructions as a whole, the jury was properly instructed to consider only speaker's conduct at the subsequent meeting. U.S.C.A. Const.Amend. 1.

[45] **Federal Courts** Taking case or question from jury; judgment as a matter of law

A court of appeals reviews de novo a district court's grant or denial of a renewed motion for judgment as a matter of law.

5 Cases that cite this headnote

[46] **Civil Rights** Criminal law enforcement; prisons

Substantial evidence supported jury's verdict that the mayor neutrally and constitutionally applied the city's decorum rules prohibiting members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior, to speaker, in speaker's § 1983 action, stemming from his arrest at a city council meeting, bringing a First Amendment as-applied challenge to the decorum rules; evidence showed that city council meeting was actually disrupted by speaker's addressing the audience and the audience's reaction to speaker's urging them to stand, and the mayor even called an unplanned recess to diffuse the disruption. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

4 Cases that cite this headnote

[47] **Federal Courts** Equity and equitable relief in general

A district court's decision to deny equitable relief is reviewed for an abuse of discretion.

[48] **Jury** Re-examination or other review of questions of fact tried by jury

It would be a violation of the Seventh Amendment right to jury trial for the court to disregard a jury's finding of fact; thus, in a case where legal claims are tried by a jury and equitable claims are tried by a judge, and the claims are based on the same facts, in deciding the equitable claims the Seventh Amendment requires the trial judge to follow the jury's implicit or explicit factual determinations. U.S.C.A. Const.Amend. 7.

26 Cases that cite this headnote

[49] **Declaratory Judgment** Counties and municipalities and their officers

Speaker at city council meeting was not entitled to equitable relief from the district court in the form of a declaration that city defendants failed to apply city ordinance, prohibiting members of the public who speak at city council meetings to engage in disorderly, insolent, or disruptive behavior, to him in a constitutional manner at the meeting, in speaker's action, stemming from his arrest at the meeting, bringing an as-applied challenge to the ordinance, given the jury's factual finding that speaker caused an actual disturbance at the meeting. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

Attorneys and Law Firms

***806** Belinda E. Helzer (argued), ACLU Foundation of Southern California, Orange, CA; Hector O. Villagra and Peter J. Eliasberg, ACLU Foundation of Southern California, Los Angeles, CA, for Plaintiff–Appellant.

M. Lois Boback (argued) and Daniel K. Spradlin, Woodruff, Spradlin & Smart, APC, Costa Mesa, CA, for Defendants–Appellees.

Appeal from the United States District Court for the Central District of California, David O. Carter, District Judge, Presiding. D.C. No. 8:06–cv–00233–DOC–MLG.

Before: RICHARD C. TALLMAN and N. RANDY SMITH, Circuit Judges, and DEE V. BENSON, District Judge.[*]

OPINION

PER CURIAM:

Costa Mesa Municipal Code § 2–61 makes it a misdemeanor for members of the public who speak at City Council meetings to engage in "disorderly, insolent, or disruptive behavior." Benito Acosta ("Acosta") was removed from the Costa Mesa City Council meeting for an alleged violation of the ordinance. Acosta appeals the district court's dismissal of his First Amendment facial challenge to the ordinance. He also appeals the district court's grant of partial summary judgment in favor of the California city and various individual police officers on his state-law free ***807** speech claims and his Fourth Amendment claims. A jury returned a defense verdict on all remaining issues submitted for trial. He also appeals the district court's discretionary decisions to admit certain evidence, refusal to give his proposed limiting instruction, denial of his renewed motion as a matter of law after the jury returned its verdict, and the denial of declaratory relief. He claims that the ordinance is facially invalid and that it was enforced against him only because he expressed a view contrary to the Mayor's.

Because § 2–61 fails to limit proscribed activity to only actual disturbances, we reverse the district court's constitutionality ruling and find the statute facially invalid. Moreover, since the unconstitutional portions of the ordinance cannot be severed from the remainder of the section, we invalidate the entire section. Nevertheless, § 2–61 was constitutionally applied to Acosta, because the jury implicitly found that his behavior actually disrupted the Council meeting. Accordingly, we affirm the remainder of the district court's determinations.

I

Petitioner–Appellant Benito Acosta is a U.S. citizen of Mexican descent who resides in Orange County, California. Acosta is a founding member of the Colectivo Tonantizin, an organization that represents the rights of undocumented and immigrant workers and their families. Defendants are the City of Costa Mesa ("City"), Mayor Allan Mansoor (the "Mayor"),

Chief of Police John Hensley, and several individual police officers.[1]

The Costa Mesa City Council meets on the first and third Tuesday of every month, with a public portion commencing at 6:00 p.m. The Mayor is the presiding officer who chairs the meeting. In compliance with California law, members of the public may address the City Council concerning any item listed on the meeting agenda at the time designated for public comment.[2] Speakers are each afforded three minutes to speak.

The City ordinances establish rules regulating council meetings. *See* Costa Mesa Mun.Code § 2–37–2–87. At issue here is § 2–61, which governs individual conduct at council meetings. A violation of § 2–61 may be prosecuted as a misdemeanor. Meetings are recorded by video cameras and the relevant recordings are part of the record on appeal.

In December 2005 the Mayor proposed that the City enter into an agreement with Immigration and Customs Enforcement ("ICE") to have its police officers designated immigration agents with the authority to enforce federal immigration laws in the City. The proposal was placed on the City Council's December 6, 2005, agenda and ***808** passed by a vote of three to two. Members of the public were permitted to comment on the ICE agreement.

Acosta believed an agreement with ICE would undermine public safety, arguing it would deter undocumented workers from reporting crimes against them for fear of deportation. He attended the December 6 council meeting to express his opposition to the proposal. When Acosta's time came to speak, the video recordings show that he was visibly emotional and agitated.[3] Toward the end of his comments he called the Mayor a "racist pig," at which point the Mayor told Acosta to stop. Acosta repeated his slur, which prompted the Mayor to cut Acosta's speaking time short by calling for a recess. Acosta then responded by calling the Mayor a "fucking racist pig." The Council nonetheless passed the proposal.

After receiving local and national media attention, the City Council again placed the ICE agreement on the agenda of the next regular Council meeting on January 3, 2006. Prior to that meeting, groups supporting and opposing the agreement demonstrated outside City Hall. Council Chambers was filled to overflow capacity and additional demonstrators remained outside. During the public comment portion of the meeting a total of twenty-five speakers addressed the City Council, fifteen in favor of the agreement and ten against.

Jim Gilchrist, co-founder of the Minuteman Project, was one of the first speakers in favor of the ICE agreement. At the beginning of his time he turned to the audience and stated that he would like for the supporters of his position to stand silently at the end of his speech. Some members of the audience began to stand. The Mayor interrupted to clarify whether Gilchrist was asking for people to stand to show that he would be the only speaker representing this group.[4] Gilchrist turned back to the Mayor and agreed that he was representing the views of the entire group. The Mayor then stated that it would be helpful if the other groups could also send up one representative; he added that everyone was entitled to speak if they wished, however.

Acosta's turn to speak in opposition to the ICE agreement began about fifty minutes later. Approximately two minutes into his remarks, Acosta turned away from the council and toward the audience to ask members who agreed with his viewpoint to stand. The Mayor interrupted him, saying, "No, we're not going to do that." In defiance of that order, still facing the audience, Acosta nonetheless said "Do it" three times. Approximately twenty to thirty ***809** people stood up in response to his urging and some began clapping. The Mayor then abruptly recessed the meeting and indicated the council would return in a few minutes.

Acosta then turned back to face the departing council in an attempt to complete his speech. As he did so, an officer approached him at the podium. Acosta testified that at first the officers told him his time was up and moved the microphone. The officers asked Acosta to step down from the podium and leave the chambers, but Acosta did not immediately comply. Instead he repeatedly asked why his speaking time was cut short and why he was being asked to leave the podium. The officers then tried to quietly escort him out of the chambers, but Acosta stopped and asked to retrieve his notes from the podium. After he retrieved his notes, Acosta began to tell the officers not to touch him and jerked away from their attempts to guide him out of the room.

Chief Hensley approached the group and directed his officers to take Acosta out of the Council Chambers. The officers again tried to guide Acosta away from the podium, but Acosta attempted to prevent his removal by leaning away from the officers and planting his feet. Sergeant Glass testified that Acosta was "not complying" with their requests to leave

and he was "stomping or placing his feet to hesitate or hamper his movement." The officers then took Acosta's arms. Acosta alleged that the officer behind him also wrapped his arm around Acosta's neck, similar to a choke hold, and that the officers kicked, dragged, and punched him while removing him. Sergeant Glass testified that Lieutenant Andersen applied an upper-body control hold with his arm across Acosta's chest and the video recording, submitted by Acosta, does not show any kind of kicking or punching.

At this point, the officers testified he was not under arrest, but only being removed to help diffuse an escalating situation. Once the officers were outside the Council Chambers, however, they encountered a large crowd and Acosta increased his efforts to resist the officers. When the officers attempted to move Acosta into the City Hall and away from the volatile crowd of demonstrators outside City Hall (some of whom threw objects at the police), Acosta wrapped his legs and arms around a pole in an attempt to prevent the officers from moving him. The officers separated him from the pole and began moving him toward the City Hall. Acosta continued to resist, causing himself and an officer to fall to the ground. Once inside the City Hall, Acosta was placed in handcuffs. Chief Hensley and another witness testified that Acosta complained that the cuffs were making his arms hurt.

Acosta brought eleven claims against Mayor Mansoor, Chief Hensley, the City, and certain individual police officers. The claims relevant to this appeal include: (1) a First Amendment facial challenge to § 2–61; (2) a facial challenge to § 2–61 under the free speech clause of the California Constitution; (3) a request for a declaration that the defendants enforced § 2–61 in an unconstitutional manner; (4) a claim that he was unreasonably and unlawfully seized in violation of the Fourth Amendment; (5) an as-applied challenge to § 2–61 under the First Amendment; and (6) an as-applied claim under the California Constitution that sought damages. At the district court and here, the core of Acosta's argument is that § 2–61 unconstitutionally restricts speech and that as applied to him the defendants selectively enforced § 2–61 based upon Acosta's opposition and criticism of the Mayor and Council Members who supported the ICE agreement.

***810** The defendants moved to dismiss the complaint. The district court dismissed without prejudice Acosta's facial challenges under both the U.S. and California Constitutions, but denied the motion as to the remaining claims because there were material questions of fact that a jury needed to decide—the most significant being whether Acosta's behavior disrupted the Council meeting. The court also concluded the Mayor was entitled to discretionary act immunity as to all of Acosta's state-law claims to the extent that he sought monetary damages and granted the City public entity immunity for Acosta's as-applied challenges under the California Constitution to the extent that he sought damages.

Subsequently, the court granted in part and denied in part the defendants' motion for summary judgment. The district court denied summary judgment of Acosta's as-applied challenge under the First Amendment against the Mayor and the City because material facts were disputed, but granted it as to the officer defendants on grounds of qualified immunity when they carried out orders to remove Acosta from the room. The court also denied summary judgment on Acosta's claim for declaratory relief and his federal due process claims against the Mayor and the City. The court granted summary judgment in favor of all the defendants on Acosta's state law free speech claim, and in favor of the police-officer defendants as to his Fourth Amendment, federal due process, and false arrest claims.

The jury heard Acosta's First and Fourteenth amendment claims arising under 42 U.S.C. § 1983 against the Mayor and the City. The jury implicitly found his conduct disruptive when it rejected these claims.[5] After trial, Acosta moved for renewed judgment as a matter of law and for a new trial. Defendants also requested entry of judgment on Acosta's declaratory judgment claim not tried to the jury. The district court denied both the motion for renewed judgment and Acosta's request for declaratory relief. Acosta now appeals.

II

[1] **[2]** Acosta first argues that the district court erred when it dismissed his claim that § 2–61 is facially invalid. We review the district court's dismissal of a claim de novo. *Kennedy v. S. Cal. Edison Co.,* 268 F.3d 763, 767 (9th Cir.2001). We also analyze the constitutionality of a statute de novo. *Planned Parenthood of S. Ariz. v. Lawall,* 307 F.3d 783, 786 (9th Cir.2002).

[3] **[4]** **[5]** On appeal, Acosta argues that § 2–61 is facially invalid, because it is overbroad. Section 2–61 states:

> Propriety of conduct while addressing the council.

***811** (a) The *presiding officer* at a meeting may in his or her discretion bar from further audience before the council, or have removed from the council chambers, any person who commits *disorderly, insolent, or disruptive behavior,* including but not limited to, the actions set forth in (b) below.

(b) It *shall be unlawful* for any person while addressing the council at a council meeting to violate any of the following rules after being called to order and warned to desist from such conduct:

(1) No person shall make any *personal, impertinent, profane, insolent, or slanderous remarks.*

(2) No person shall yell at the council in a loud, disturbing voice.

(3) No person shall speak without being recognized by the presiding officer.

(4) No person shall continue to speak after being told by the presiding officer that his allotted time for addressing the council has expired.

(5) Every person shall comply with and obey the lawful orders or directives of the presiding officer.

(6) No person shall, by disorderly, insolent, or disturbing action, speech, or otherwise, substantially delay, interrupt, or disturb the proceedings of the council.

Costa Mesa, Cal., Mun.Code § 2–61 (2012) (emphasis added). We will invalidate this section as "overbroad," violating the First Amendment, if "a substantial amount of its applications are unconstitutional, judged in relation to [its] plainly legitimate sweep." *United States v. Stevens,* 559 U.S. 460, 130 S.Ct. 1577, 1587, 176 L.Ed.2d 435 (2010) (internal quotation marks omitted). Although "[t]he concept of 'substantial overbreadth' is not readily reduced to an exact definition," it generally means that we will not invalidate a statute on its face unless "there [is] a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court." *City Council v. Taxpayers for Vincent,* 466 U.S. 789, 800–01, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984). An ordinance that governs the decorum of a city council meeting is "not facially overbroad [if it] only permit[s] a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting." *Norse v. City of Santa Cruz,* 629 F.3d 966, 976 (9th Cir.2010) (en banc) (emphasis added). However, actually disturbing or impeding a meeting means "[a]ctual disruption" of the meeting; a municipality cannot merely define disturbance "in any way [it] choose[s]," e.g., it may not deem any violation of its rules of decorum to be a disturbance. *Id.*

[6] **[7]** With that foundation, "the first step in overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers." *Stevens,* 130 S.Ct. at 1587 (internal quotation marks omitted). In doing so, we must apply California's rules of statutory construction, as no courts have previously construed § 2–61. *Cassell v. Kolb (In re Kolb),* 326 F.3d 1030, 1037 (9th Cir.2003). Thus, we must give the ordinance's language "its usual, ordinary import and accord[ ] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose." *Dyna–Med, Inc. v. Fair Emp't. & Hous. Comm'n,* 43 Cal.3d 1379, 1386–87, 241 Cal.Rptr. 67, 743 P.2d 1323 (1987). In doing so, we must also apply two principles: "First, the enactment may be validated if its terms are reasonably susceptible to an interpretation consistent with the [C]onstitution. ***812** Second, [we] should construe the enactment so as to limit its effect and operation to matters that may be constitutionally regulated or prohibited." *People v. Superior Court (Anderson),* 151 Cal.App.3d 893, 199 Cal.Rptr. 150, 151 (1984).

Applying these principles, we conclude that Costa Mesa Municipal Ordinance § 2–61 is overbroad on its face, and that no reasonable construction can eliminate its overbreadth. Further, the overbroad terms in § 2–61 are not severable under California law. Therefore, we must invalidate § 2–61 as presently written in its entirety.

A

[8] First, we must determine if we can construe § 2–61 such that it will not reach a "substantial amount of constitutionally protected conduct." *City of Houston v. Hill,* 482 U.S. 451, 459, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987). Acosta argues that the language of § 2–61(b)(1) makes all of § 2–61 overbroad, so we will begin our analysis there. Section 2–61(b)(1) prohibits "any personal, impertinent, profane, insolent, or slanderous remarks." Acosta argues that this prohibition impermissibly "regulates protected speech based on the viewpoints expressed," because "favorable, complimentary, or positive speech" would not violate the ordinance. If subsection (b)(1) does reach such speech, it

is unconstitutional. *See Rosenberger v. Univ. of Va.,* 515 U.S. 819, 828–29, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). However, before arriving at that conclusion, we must analyze whether § 2–61 can be construed to avoid the constitutional issue subsection (b)(1) introduces. *Anderson,* 199 Cal.Rptr. at 151.

The City suggests three possible constructions of the ordinance to solve the constitutional defect. First, subsection (a) should be read as a limit on subsection (b) and subsection (a) should be read to require that speech cause an actual disruption before the presiding officer may stop it. Second, subsection (b) should be read as a list of "examples of the types of *actions,* as opposed to mere words, that might constitute disruptive behavior" in subsection (a).[6] Third, subsection (b)(6) should be read as a limitation on the entire section (the City offered this reading of the statute at oral argument). We discuss each of these alternatives below.

1

[9] Because the City's first and second potential constructions are not reasonable ways to read the statute, we cannot adopt them. Both depend on a relationship between subsection (a) and subsection (b) that the text of the ordinance does not support. Specifically, the City suggests that we read subsection (b) in connection with, and as limited by, subsection (a). However, no language in subsection (a) indicates that it limits subsection (b) in all cases, whenever subsection (b) is violated. ***813** On the contrary, by declaring the listed speech and behavior "unlawful," the City gave subsection (b) a legal effect independent of subsection (a). Even though subsections (a) and (b) are part of the same statutory section, we refuse to forge a connection between them that goes beyond what the text of the ordinance permits.

The text of § 2–61 is different from the ordinance at issue in *White v. City of Norwalk,* 900 F.2d 1421 (9th Cir.1990). There, the court concluded that the following ordinance *was* susceptible to a limiting construction, though the first sentence (which parallels the language of subsection (b)(1) in the instant case) was unconstitutional on its own:

> 3. Persons Addressing the Council ... Each person who addresses the Council shall not make *personal impertinent, slanderous or profane remarks* to any member of the Council, staff or general public. Any person who makes *such remarks,* or who utters loud, threatening, personal or abusive language, or engages in any *other disorderly conduct* which *disrupts, disturbs or otherwise impedes* the orderly conduct of any Council meeting shall, at the discretion of the presiding officer or a majority of the Council, be barred from further audience before the Council during that meeting....

900 F.2d at 1424 (emphasis added). The court determined that the second sentence in the section (beginning "Any person who makes ...") could readily be interpreted to modify the overbroad first sentence, because it included adjectives that clearly referred to the speech described in the first sentence ("such remarks" and "other disorderly conduct"). *Id.* Because the second sentence modified the first, the series of qualifiers indicating that the prohibited conduct must be conduct which "disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting" limited the potential applications of the statute to speech that caused an actual disturbance. *Id.* The requirement of actual disruption meant that the ordinance was valid.

Like the ordinance in *White*, § 2–61 prohibits the making of "personal, impertinent, profane, insolent or slanderous remarks." That, without limitation, is an unconstitutional prohibition on speech. However, unlike the ordinance in *White*, § 2–61 is not "readily susceptible" to a narrowing construction that would render it constitutional. No textual link ties subsection (a) to subsection (b) like the second sentence of the ordinance in *White* was tied to the first.

In addition to being grammatically independent, subsections (a) and (b) appear to have distinct purposes. Subsection (a) authorizes a meeting's presiding officer to deal with a person who engages in certain types of conduct when addressing the City Council. Subsection (b) prohibits persons who are addressing the City Council from engaging in certain types of conduct. Subsections (a) and (b) are related, because (b) provides the presiding officer with a non-exclusive list of grounds for exercising the authority that subsection (a) confers on him or her; the text does not support reading these two sections together any other way. Thus, subsections (a) and (b) can only fairly be read together when two predicates are satisfied: (1) a person addressing the City Council engages in conduct that subsection (b) prohibits, and (2) the presiding officer takes adverse action against that person based on that conduct.

Other provisions of the Costa Mesa Municipal Code give subsection (b) independent effect in circumstances where subsection (a) might not operate (e.g., a person engages in

conduct that subsection (b) prohibits, but the presiding officer does not exercise his power under subsection (a)). ***814** For example, § 2–66 authorizes the sergeant-at-arms (who, at the January 3 meeting, was Chief Hensley) to "arrest any person violating the provisions" of Chapter III of the Code. Costa Mesa, Cal., Mun.Code § 2–66. Additionally, § 1–34(a) authorizes civil fines to be imposed for "any violation of the provisions of [the] Code." Costa Mesa, Cal., Mun.Code § 1–34(a). These sections give § 2–61(b) independent legal significance, because engaging in the enumerated "unlawful" behaviors would subject the violator to arrest, a civil fine, or both.[7] Nothing in the language of § 2–61 indicates that subsection (a) limits the circumstances in which subsection (b) triggers these sanctions.

Moreover, § 2–60 clarifies that the drafters of the Code use the formulation "it shall be unlawful" to have independent legal significance. The text of that section is as follows:

> Propriety of conduct of council members.
>
> (a) Members of the council shall preserve order and decorum during a meeting.
>
> (b) It shall be unlawful for any member of the council to violate any of the following rules:
>
> (1) Members of the council shall not, by disorderly, insolent or disturbing action, speech, or otherwise, substantially delay, interrupt or disturb the proceedings of the council.
>
> (2) Members of the council shall obey and carry out the lawful orders or directives of the presiding officer.

Costa Mesa, Cal., Mun.Code § 2–60. Like subsection (b) of § 2–61, subsection (b) of § 2–60 prohibits specific types of conduct by declaring them to be "unlawful." However, § 2–60 does not contain a provision that authorizes a city official to deal with a person engaged in the prohibited conduct, like subsection (a) in § 2–61. Presumably, enforcement power must be provided by some other part of the Code (such as § 2–66 or § 1–34(a)) if these prohibitions are to have any coercive effect. Therefore, the drafters of the Code employ the formulation "it shall be unlawful" to trigger the sanctions available for "violations" of the code whenever a person engaged in the "unlawful" conduct.

Thus, it would be reasonable to assume that the drafters intended § 2–61(b) to have the same effect as § 2–60(b) when they used the same "it shall be unlawful" formulation there. Namely, a violation of subsection (b) will trigger potential sanctions under § 2–66 and § 1–34 *in addition* to those sanctions available under § 2–61(a). Therefore, subsection (b) has legal significance independent of subsection (a). There is no textual basis for reading subsection (b) together with subsection (a) in such applications. As such, a person may be fined or arrested for violating subsection (b)(1), regardless of whether his "personal, impertinent, profane, or slanderous remarks" are actually "disruptive." Although we must adopt a constitutional construction of § 2–61 if such a reading is fairly possible, the City's first two suggested constructions do not meet that standard.

2

Even if subsection (a) provided a blanket limitation like the City suggests, that would not be enough to validate the statute. The items in the series of narrowing qualifiers in subsection (a) ("disorderly, *insolent,* ***815** or disruptive behavior") are different from the series of narrowing qualifiers in *White,* 900 F.2d at 1426 ("disrupts, disturbs, or otherwise impedes"). All three items in *White*'s qualifying list refer to actions creating some type of actual disruption. *See* 900 F.2d at 1424. Thus, these qualifiers satisfy *Norse*'s requirement that rules of decorum should "only permit a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting." 629 F.3d at 976 (emphasis added).

[10] Here, subsection (a) imposes no such limitation. Only the words "disorderly" and "disruptive" are qualifiers that refer to actual disruption of the city proceedings. The third qualifier merely prohibits "insolent" behavior. The Costa Mesa Municipal Code does not define the term "insolent." "When terms are not defined within a statute, they are accorded their plain and ordinary meaning, which can be deduced through reference sources such as general usage dictionaries." *UMG Recordings, Inc. v. Shelter Capital Partners LLC,* 667 F.3d 1022, 1041 (9th Cir.2011). Webster's Third defines "insolent" as "*haughty* and *contemptuous* or brutal in behavior or language" or "lacking usual or proper respect for rank or position." Webster's Third New International Dictionary 1170 (emphasis added). This type of expressive activity could, and often likely would, fall well below the level of behavior that actually disturbs or impedes a City Council proceeding.

[11] Furthermore, we cannot read the words "disruptive" or "disorderly," which surround the term "insolent," as

a modification of that term. California courts follow the common rule of statutory construction that gives disjunctive and distinct meaning to items separated by the word "or." *In re Jesusa V.,* 32 Cal.4th 588, 10 Cal.Rptr.3d 205, 85 P.3d 2, 24 (2004) ("The ordinary and popular meaning of the word 'or' is well settled. It has a disjunctive meaning: In its ordinary sense, the function of the word 'or' is to mark an alternative such as either this or that." (internal citation and quotation marks omitted)); *see also In re C.H.,* 53 Cal.4th 94, 133 Cal.Rptr.3d 573, 264 P.3d 357 (2011) (same). Thus, because "insolent" is separated from "disorderly" and "disruptive" by the word "or," it must be interpreted to mean something distinct.

Therefore, even if subsection (a) does limit subsection (b), it does not limit it in a way that alleviates any constitutional infirmity in subsection (b)(1). Any activity discussed under subsection (b) that is also merely "insolent" under subsection (a) is prohibited under the plain terms of the City's ordinance. For instance, a "remark[ ]" that is "personal," "impertinent," "profane," or "insolent" under subsection (b)(1), could be "insolent ... behavior" under subsection (a), justifying removal of the speaker. Accordingly, a comment amounting to nothing more than bold criticism of City Council members would fall in this category, whereas complimentary comments would be allowed.[8] Nothing guarantees that such a comment would rise to the level of actual disruption. Thus, the ordinance allows the City to prohibit non-disruptive speech that is subjectively "impertinent, "insolent," or essentially offensive, even when subsection (a) is read as limiting subsection (b)(1).

***816 [12]** "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson,* 491 U.S. 397, 414, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989) (collecting cases); *see also R.A.V. v. St. Paul,* 505 U.S. 377, 392, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) ("[Government] has no [authority] to license one side of a debate to fight freestyle, while requiring the other to follow the Marquis of Queensbury rules."). Neither of the first two alternative constructions proposed by the City will save the ordinance, because they would permit City officials to prohibit speech on precisely those grounds.

3

We also reject the City's third proposed construction, because it too depends on reading the statute in a way that the text does not permit. The City argues that subsection (b)(6) can be read as a limit on the entire statute. However, by its terms, subsection (b)(6) is only one of many examples under subsection (a) of how someone who is addressing the City council might act in a "disorderly, insolent, or disruptive" manner. Nothing textually about subsection (b)(6) limits anything in the rest of § 2–61. Additionally, it is difficult to square the City's argument that subsection (b)(6) limits all of § 2–61, with its argument that § 2–61(a) does the same thing.

4

We conclude that § 2–61 is overbroad, because it unnecessarily sweeps a substantial amount of non-disruptive, protected speech within its prohibiting language. *See Vlasak v.Super. Ct. of Cal. ex rel. Cnty. of L.A.,* 329 F.3d 683, 689 (9th Cir.2003). In *White,* the court explained that, while a speaker may be stopped "if his speech becomes irrelevant or repetitious," even in a limited public forum "a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing." 900 F.2d at 1425; *see also Chaker v. Crogan,* 428 F.3d 1215, 1226–27 (9th Cir.2005) (statute that prohibits false statements complaining about the actions of a police officer, while permitting false statements in support of a police officer, is a viewpoint discriminatory violation of the First Amendment). The City has not offered a fairly possible limiting construction that would prevent city officials from enforcing § 2–61 against such speech (and we could not come up with one). In fact, other City ordinances demonstrate that § 2–61 could have been written more narrowly. *See* Costa Mesa, Cal., Mun.Code § 2–64 ("It shall be unlawful for any person in the audience at a council meeting to do any of the following ... (1) Engage in disorderly, disruptive, disturbing, delaying or boisterous conduct, such as, but not limited to, handclapping, stomping of feet, whistling, making noise, use of profane language or obscene gestures, yelling or similar demonstrations, which conduct substantially *interrupts, delays, or disturbs* the peace and good order of the proceedings of the council." (emphasis added)); *see also id.* § 2–60 ("Members of the council shall not, by disorderly, insolent, or disturbing action, speech, or otherwise, substantially *delay, interrupt or disturb* the proceedings of the council." (emphasis added)). Therefore, § 2–61 is unconstitutional as written.

We note that this statute appears to be like the one that the Supreme Court invalidated in *Hill,* 482 U.S. at 455, 461, 107 S.Ct. 2502. In *Hill,* the Court held that a city ordinance that made it unlawful for a person "to assault, strike or in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty" was unconstitutionally overbroad. *Id.* The Court determined that the "ordinance ***817** criminalizes a substantial amount of constitutionally protected speech, and accords the police unconstitutional discretion in enforcement." *Id.* at 466–67, 107 S.Ct. 2502 (emphasis added). "Far from providing the breathing space that First Amendment freedoms need to survive," the Court concluded that "the ordinance is susceptible of regular applications to protected expression," making it overbroad. *Id.* (internal citation and quotation marks omitted). We reach the same conclusion here with respect to § 2–61(b)(1).

B

[13] Although § 2–61 is unconstitutional as written, we can avoid invalidating the entire section if we can sever the unconstitutional elements from the ordinance. To do so, we must analyze both (1) whether we can sever the term "insolent" from subsection (a), and (2) whether we can sever the terms "personal, impertinent, profane, insolent" from subsection (b)(1).[9] The City of Costa Mesa has declared that an unconstitutional "phrase, clause, sentence, paragraph [or] section" of the Code should be severed in order to uphold the constitutional parts of the Code. *See* Costa Mesa, Cal., Mun.Code § 1–32. Despite this authorization, the ordinance is only constitutional if the text to be severed is volitionally, grammatically, and functionally severable. *McMahan v. City & Cnty. of San Francisco,* 127 Cal.App.4th 1368, 26 Cal.Rptr.3d 509, 513 (2005); *MHC Fin. Ltd. P'ship Two v. City of Santee,* 125 Cal.App.4th 1372, 23 Cal.Rptr.3d 622, 639 (2005); *City of Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 772, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988) ("Severability of a local ordinance is a question of state law...."). Here, we begin with volitional severability, the "most important" factor in the severability analysis.[10] *See Katz v. Children's Hosp. of Orange Cnty.,* 28 F.3d 1520, 1531 (9th Cir.1994). We conclude that § 2–61 cannot pass the test for volitional severability, which is fatal to the severability analysis. *McMahan,* 26 Cal.Rptr.3d at 513 ("All three criteria must be satisfied.").

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[14] **[15]** Text passes the test for volitional severability if "it can be said with ***818** confidence that the [enacting body]'s attention was sufficiently focused upon the parts to be [validated] so that it would have separately considered and adopted them in the absence of the invalid portions." *Gerken v. Fair Political Practices Comm'n,* 6 Cal.4th 707, 25 Cal.Rptr.2d 449, 863 P.2d 694, 699 (1993) (alterations omitted). In this case, as in *McMahan,* the "text of the initiative underscore[s] its primary objective." 26 Cal.Rptr.3d at 514. Looking to the text of § 2–61, it is not at all clear that the enacting body's "attention was sufficiently focused" on the purpose of only prohibiting disruptive conduct such that this ordinance would have still been passed in its constitutional form, e.g., if it only prohibited disruptive conduct. *See Gerken,* 25 Cal.Rptr.2d 449, 863 P.2d at 699. Subsection (a) prohibits "insolent" behavior (which could include speech), and subsection (b)(1) prohibits "personal, impertinent, profane, insolent ... remarks," even if the speech does not cause a disruption. However, these terms are interwoven with other adjectives that describe categories of speech, which it is constitutional for the City to prohibit. Assuming that the City's purpose in enacting § 2–61 was to regulate both disruptive and non-disruptive speech, we cannot say that its attention was sufficiently focused on only employing § 2–61 to prohibit disruptive speech.

The "intended function of [the] particular statutory scheme" as a whole supports our conclusion that § 2–61 fails the volitional severability prong. *Barlow v. Davis,* 72 Cal.App.4th 1258, 85 Cal.Rptr.2d 752, 758 (1999); *Briseno v. City of Santa Ana,* 6 Cal.App.4th 1378, 8 Cal.Rptr.2d 486, 490 (1992) (analyzing the "overall statutory scheme" to determine legislative intent). Section 2–61 clearly prohibits expressive speech by employing the term "insolent" without qualification, whereas other sections of the City's ordinances only prohibit speech that "substantially delays, interrupts or disturbs" a meeting. *See, e.g.,* Costa Mesa, Cal., Mun.Code § 2–60 ("It shall be unlawful for any member of the council to ... by disorderly, insolent or disturbing action, speech, or otherwise, substantially delay, interrupt or disturb the proceedings of the council"); *id.* § 2–64 ("It shall be unlawful for any person in the audience at a council meeting to ... [e]ngage in disorderly, disruptive, disturbing, delaying or boisterous conduct ... which conduct substantially interrupts, delays, or disturbs the peace and good order of the proceedings of the council."). In previous cases, we have

explained that, when the enacting body uses language that is distinct from similar statutes, we must give meaning to that distinction. *Planned Parenthood of Idaho, Inc. v. Wasden,* 376 F.3d 908, 937 (9th Cir.2004). In *Wasden,* we held that "the fact that Idaho chose to provide a novel definition, narrower than those given in more than half of its sister states, obligates us to consider what it meant by making that considered choice." *Id.* Similarly here, use of appropriate qualifying language by the City of Costa Mesa in § 2–60 and § 2–64 demonstrates that the City knew how to enact an ordinance aimed at preventing actual disturbances of council meetings. The City's choice to go further in § 2–61 by prohibiting "insolent" speech and "personal, impertinent, profane ... remarks" demonstrates a meaningful difference that we cannot ignore, indicating that the City intended these prohibitions to be a functional aspect of § 2–61.

Metromedia, Inc. v. City of San Diego, 32 Cal.3d 180, 185 Cal.Rptr. 260, 649 P.2d 902 (1982) supports this analysis. There, the California Supreme Court explained that "we know of no precedent for holding that a clause of a statute, which as enacted is unconstitutional, may be changed in meaning in order to give it *some operation,* ***819** when admittedly it cannot operate as the Legislature intended." *Metromedia,* 185 Cal.Rptr. 260, 649 P.2d at 908 n. 10 (emphasis added) (quoting *People v. Perry,* 79 Cal. 105, 21 P. 423 (1889)). On that basis, the court refused to sever portions of a statute where it was "doubtful whether the purpose of the original ordinance is served by a truncated version" and the severance would "leave the city with an ordinance different than it intended, one less effective in achieving the city's goals." *Id.* at 909.[11] Here, by severing the unconstitutional terms from § 2–61, we would similarly leave an ordinance that no longer prohibits the speech the City intended it to prohibit.

Based on the foregoing, we are not "confident" that the City would have enacted § 2–61 without the parts we have determined to be unconstitutional. *Cf. McMahan,* 26 Cal.Rptr.3d at 516 (finding provisions of law volitionally severable when court "confident that the provisions [to be retained after severance] would have received the endorsement of the vast majority of voters, even [without the unconstitutional part]"). Therefore, the volitional severability prong is not satisfied. As a result, neither the term "insolent" in subsection (a), nor the terms "personal, impertinent, profane, insolent" in subsection (b)(1) can be severed from § 2–61. *McMahan,* 26 Cal.Rptr.3d at 513 ("All three criteria must be satisfied."). Because these terms cannot be severed and § 2–61 is not reasonably susceptible to a narrowing construction, we must invalidate the entire section on this basis alone. We nonetheless analyze the remaining two prongs, grammatical and functional severability.

2

[16] Text is grammatically (or "mechanically") severable only when it constitutes a "physically separate section[ ] of the proposition." *Santa Barbara Sch. Dist. v. Superior Court,* 13 Cal.3d 315, 118 Cal.Rptr. 637, 530 P.2d 605, 618 (1975). Thus, when California courts have concluded that text was grammatically severable, the text was severed from language that was in an entirely different sentence or section of the statute, making it grammatically "complete and distinct." *People's Advocate, Inc. v. Superior Court,* 181 Cal.App.3d 316, 226 Cal.Rptr. 640, 648–49 (1986); *see also Gerken,* 25 Cal.Rptr.2d 449, 863 P.2d at 698 ("Petitioners concede the various remaining parts of Proposition 73 meet the" grammatically separable requirement for the severability test, because the severed portion was an entirely separate provision of the statute); *Calfarm Ins. Co. v. Deukmejian,* 48 Cal.3d 805, 258 Cal.Rptr. 161, 771 P.2d 1247, 1256 (1989) (the invalid provision in this case was "distinct and separate" and could be "removed as a whole without affecting the *wording* of any other provision" (emphasis added)); *McMahan,* 26 Cal.Rptr.3d at 513 ("appellants concede[d] the invalid funding mandate [was] grammatically severable" because it was a completely separate portion of the statute); *Barlow,* 85 Cal.Rptr.2d at 757 (the invalid portion could be severed because it constituted an "entirely separate statute grammatically and mechanically from the invalid substantive provisions"); *Briseno,* 8 Cal.Rptr.2d at 490 (the unconstitutional word did "not even appear in [the] section" at issue); ***820** *Santa Barbara Sch. Dist.,* 118 Cal.Rptr. 637, 530 P.2d at 617–18 (the text severed was a separate and distinct statutory provision).

[17] First we address whether the word "insolent" is grammatically severable from subsection (a) of § 2–61. No California cases hold that one word and the two commas surrounding it are grammatically severable from statutory text. By contrast, at least two California cases dealing with a similar issue refused to sever one unconstitutional word from a sentence. *See Cnty. of Sonoma v. Superior Court,* 173 Cal.App.4th 322, 93 Cal.Rptr.3d 39, 61–62 (2009) (refusing to sever the word "unanimous" from the middle of text); *Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach,* 14 Cal.App.4th 312, 17 Cal.Rptr.2d 861, 867–68 (1993)

(refusing to follow the city's request of replacing "may" with "shall" in the middle of a statutory sentence). Indeed, in *City of Long Beach,* the court determined that neither the offending word "may" nor the remaining unconstitutional section could be removed to save the ordinance. *Id.* at 867–69. Further, to so alter subsection (a) would contravene California's prohibition against "affecting the wording of any other provision." *Calfarm Ins. Co.,* 258 Cal.Rptr. 161, 771 P.2d at 1256; *accord Barlow,* 85 Cal.Rptr.2d at 757; *Maribel M. v. Superior Court,* 61 Cal.App.4th 1469, 72 Cal.Rptr.2d 536, 541 (1998). Thus, while distinct sections can be "*separated* by [a] paragraph, sentence, clause, phrase or even [a] single word[ ]," *Barlow,* 85 Cal.Rptr.2d at 757, grammatical severability does not permit a single word to be excised from the middle of a clause or phrase.

[18] Next we analyze whether a grouping of individual words, "personal, impertinent, profane, insolent" is severable from the surrounding text in subsection (b). For the same reasons just discussed with respect to severing the term "insolent" from subsection (a), we conclude that these words are not grammatically severable from subsection (b). Although this grouping contains more than one word, the same concerns with severing a single word from a sentence apply to severing a group of individual words from a sentence. Unlike a clause or phrase, the grouping of individual words does not form a complete grammatical unit expressing one legislative thought. Were we to excise single words (or groups of individual words), we would be "rewrit[ing] [the ordinance] in order to save it." *United States v. Buckland,* 289 F.3d 558, 564 (9th Cir.2002).

The terms of Costa Mesa's severability clause, while not determinative, support our conclusion that the individual words at issue are not grammatically severable from their surrounding text. The specific language of "the severability clause [is] considered in conjunction with the separate and discrete provisions of" the text to determine whether the "grammatical component of the test for severance is met." *Barlow,* 85 Cal.Rptr.2d. at 757 (internal quotation marks omitted). Here, the City's severability clause only states that "sections, paragraphs, clauses and phrases of this Code are severable," rather than individual words. Costa Mesa, Cal., Mun.Code § 1–32. Therefore, the severability clause indicates that the City did not intend something less than a phrase to be grammatically severable.

3

[19] **[20]** Finally, the unconstitutional words must also be functionally severable if we are to only excise the invalid terms while upholding the remainder of the ordinance. Text is functionally severable if it is not necessary to the ordinance's operation and purpose. *City of Long Beach,* 17 Cal.Rptr.2d at 868–69. Neither the term "insolent" in subsection (a) nor the terms ***821** "personal, impertinent, profane, insolent" in subsection (b)(1) can be said to be unnecessary to the operation and purpose of § 2–61 as enacted by the City of Costa Mesa. Drawing on the foregoing plain text analysis, one of the purposes of the ordinance is to prohibit certain classes of expressive speech by persons addressing the City Council, even if it does not disturb or disrupt the conduct of the meeting. Excising these terms from § 2–61 removes nondisruptive, non-disturbing speech from the scope of the ordinance's operation.

The testimony of the Chief of Police in this case demonstrates that the term "insolent" was not unnecessary to the operation of § 2–61. The Chief testified at trial that city officials relied on the word "insolent" as a key part of effectuating § 2–61's purpose of prohibiting protected speech. When asked whether § 2–61 "allowed [the police] to arrest the persons *insolent,*" he answered, "Yes." The Chief also answered affirmatively when asked whether § 2–61 "was enforced in Costa Mesa" such that it "would be [a] violation[ ] of the municipal code" to make "insulting remarks."

The Chief of Police's testimony here parallels that of a city official in *City of Long Beach.* In that case, the official charged with enforcing the ordinance testified that the ordinance could be enforced in an unconstitutional way. *City of Long Beach,* 17 Cal.Rptr.2d at 868. The court then held that, when "[f]aced with ... ambivalence by the official charged with enforcing the section, [courts] *cannot* depart from its plain language." *Id.* (emphasis added). Likewise here, the Chief's testimony that § 2–61 is enforced unconstitutionally affirms our conclusion that the unconstitutional text is not functionally severable from § 2–61.

4

[21] If a statute does not meet any one criteria (grammatical, functional, *or* volitional severability), then a court may not sever text from a statute. *McMahan,* 26 Cal.Rptr.3d at 513.

Section 2–61 satisfies none of them, so it must be invalidated as a whole. Even though invalidation of the entire provision for overbreadth is a harsh remedy, it is necessary when we cannot reconcile full protection for First Amendment liberties with the discernable intent of the enacting body. "[G]radually cutting away the unconstitutional aspects of a statute by invalidating its improper applications case by case ... does not respond sufficiently to the peculiarly vulnerable character of activities protected by the first amendment." *People v. Rodriguez,* 66 Cal.App.4th 157, 77 Cal.Rptr.2d 676, 683 (1998); *see also In re Berry,* 68 Cal.2d 137, 65 Cal.Rptr. 273, 436 P.2d 273, 286 (1968) (finding "the doctrine of severability ... inapplicable" where "a provision encompasses both valid and invalid restrictions of free speech and its language is such that a court cannot reasonably undertake to eliminate its invalid operation by severance or construction" despite the existence of a severability clause). For an "overbroad law hangs over people's heads like a Sword of Damocles." *Rodriguez,* 77 Cal.Rptr.2d at 683 (internal quotation marks and alterations omitted). By invalidating § 2–61 in its entirety, we eliminate the Dionysian threat that the ordinance presents to those who are addressing the City of Costa Mesa City Council.

III

We turn next to Acosta's claim that the district court improperly granted summary judgment on his as-applied challenge to § 2–61 in favor of the City on grounds of public entity immunity to the extent that he sought damages.

A

[22] As a threshold matter, we note that our determination that § 2–61 is facially ***822** overbroad does not impact the district court's or our determination of Acosta's as-applied challenges. Facial and as-applied challenges can be viewed as two separate inquiries. *See Bd. of Trs. of State Univ. of New York v. Fox,* 492 U.S. 469, 482–86, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989); *Taxpayers for Vincent,* 466 U.S. at 800 n. 19, 104 S.Ct. 2118 (stating that an overbroad regulation of speech may be facially invalid, even though its application in the instant case is constitutional).

[23] If a statute is found facially unconstitutional on appeal, then the district court's determination that the statute was applied in a constitutional manner may remain undisturbed. *See City of Houston, Tex. v. Hill,* 482 U.S. 451, 457, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987) (illustrating that although the Court of Appeals found a statute facially unconstitutional, the Supreme Court nevertheless left undisturbed the district court's ruling that the statute had not been applied in an unconstitutional manner). Indeed, standing for a First Amendment facial challenge does not depend on whether the complainant's own activity is shown to be constitutionally privileged. *See Bigelow v. Virginia,* 421 U.S. 809, 815–16, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975); *see also Brockett v. Spokane Arcades, Inc.,* 472 U.S. 491, 503, 105 S.Ct. 2794, 86 L.Ed.2d 394 (1985) (collecting cases that hold "an individual whose own speech may validly be prohibited or sanctioned is permitted to challenge a statute on its face because it also threatens others not before the court"). Thus, we need not reverse the jury's verdict or the court's determination on partial summary judgment on the as-applied claims against the defendants simply because we find § 2–61 facially overbroad. Instead, we will review the merits of Acosta's remaining claims on appeal.

B

We review de novo the district court's decision to grant summary judgment. *Davis v. City of Las Vegas,* 478 F.3d 1048, 1053 (9th Cir.2007). We must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. *Olsen v. Id. State Bd. of Medicine,* 363 F.3d 916, 922 (9th Cir.2004).

On appeal, Acosta challenges the district court's grant of partial summary judgment in favor of the City on Acosta's as applied state constitutional claim on grounds of public entity immunity, but Acosta does not challenge the grant of discretionary act immunity to the Mayor and the Chief of Police pursuant to California Government Code § 820.2.

California Government Code § 815 provides:

> Except as otherwise provided by statute:
>
> (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
>
> (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity

of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

To challenge the district court's determination, Acosta relies upon *Young v. County of Marin,* 195 Cal.App.3d 863, 241 Cal.Rptr. 169 (1987) and the Committee Comment to § 815, both of which carve out an exception to § 815 for constitutionally created claims.

[24] Under California's Tort Claims Act "public entities are immune where ***823** their employees are immune, except as otherwise provided by statute." *Caldwell v. Montoya,* 10 Cal.4th 972, 42 Cal.Rptr.2d 842, 897 P.2d 1320, 1325 (1995) (citations omitted). While Acosta is correct that *Young* notes the general exception that § 815 does not protect a public entity from liability for constitutionally created claims, he does not challenge the district court's determinations that (1) his as-applied state-law claim failed to state a claim because damages were not available to him, or (2) the Mayor and the Chief of Police are entitled to discretionary act immunity.[12] Instead he claims that the district court extended California case law too far in granting the City public entity immunity.

Without any basis for an underlying claim, it is unclear to us how Acosta's claim for relief supports an exception to the rule that a public entity will be immune where the employees are immune. Acosta makes general statements that *Young* controls and therefore his damages claim predicated upon his as-applied challenge under the California Constitution qualifies as a "constitutional violation" of the type excepted from § 815. In *Young,* however, the individual actors were not granted discretionary act immunity nor did the court address whether a constitutional tort action for damages should be recognized. Both of these unchallenged determinations fatally undermine Acosta's argument.

Because the Mayor and the Chief of Police are immune, California's general principle that a public entity is immune where its employees are immune controls. And as there are no independent grounds, either in the language or history of the section, to support implying a constitutional tort action, *Degrassi,* 127 Cal.Rptr.2d 508, 58 P.3d at 366, Acosta's mere citation to the free speech clause does little to bolster his argument that the City was not entitled to public entity immunity. We affirm the district court's grant of summary judgment on claim two in favor of the City.

IV

[25] Acosta next argues that the district court erred in granting the individual police officers summary judgment on his First and Fourth Amendment claims. He argues that the officers were not entitled to qualified immunity for any of these claims. We review de novo a district court's decision to grant summary judgment on the basis of qualified immunity. *See Davis,* 478 F.3d at 1053.

A

[26] Again, our determination that § 2–61 is facially invalid does not impact our review of the district court's determination that the individual officers are entitled to qualified immunity. When a city council enacts an ordinance, officers are ***824** entitled to assume that the ordinance is a valid and constitutional exercise of authority. *See Grossman v. City of Portland,* 33 F.3d 1200, 1209 (9th Cir.1994). If an officer reasonably relies on the council's duly enacted ordinance, then that officer is entitled to qualified immunity. *Id.* at 1210.

In *Grossman,* a doctor protested the presence of a warship carrying nuclear weapons in the Portland harbor and was arrested pursuant to a city ordinance that prohibited organized demonstrations without receiving a permit from the city parks commissioner. *Id.* at 1202–03. The ordinance under which the doctor was arrested was found unconstitutional, but the court held that the officer was still entitled to qualified immunity, because the officer correctly believed that the city ordinance required a permit. *Id.* at 1210. Further, the court explained that it was objectively reasonable for the officer to rely on the constitutionality of the ordinance because it had been "duly promulgated" by the city council and it was not so obviously unconstitutional as to require a reasonable officer not to enforce it. *Id.*

[27] In the present case, qualified immunity still protects the officers even though we find the statute upon which they relied facially unconstitutional. Like the statute in *Grossman*, § 2–61 was duly promulgated by the proper process and was recognized as a valid portion of the Costa Mesa Municipal Code. Just as the officer in *Grossman* reasonably believed the statute constitutional, the officers here reasonably believed § 2–61 was constitutional. During oral argument, strong arguments were presented for the constitutionality of this

statute and it would not be fair to require the officers of Costa Mesa to be versed in the nuances of the canons of construction such that they would recognize this statute's potential constitutional invalidity. Thus, it was objectively reasonable for the officers to believe the ordinance valid when they removed and later arrested Acosta for violating § 2–61.

B

[28] **[29]** **[30]** "Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Reichle v. Howards,* —— U.S. ——, 132 S.Ct. 2088, 2093, 182 L.Ed.2d 985 (2012). Assessing whether an official is entitled to immunity is a two prong inquiry. Under the first prong we ask whether, "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Saucier v. Katz,* 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). Under the second prong we examine whether the right was clearly established. *Id.* To be "clearly established, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton,* 483 U.S. 635, 639, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987) (internal quotation marks omitted). In other words, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al–Kidd,* —— U.S. ——, 131 S.Ct. 2074, 2083, 179 L.Ed.2d 1149 (2011). We may examine either prong first, considering the circumstances presented on appeal. *Pearson v. Callahan,* 555 U.S. 223, 236, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009).

[31] Acosta presents two arguments that the officers are not entitled to qualified immunity for seizing or arresting him: (1) he was arrested in retaliation for questioning the officers about why his time to speak was cut short and why he was asked to leave the council meeting; and (2) the ***825** officers lacked the requisite level of suspicion to seize or arrest him. Resolution of both contentions turns on whether probable cause existed to seize Acosta.

Assuming Acosta's contention accurately reflects why he was arrested, Acosta's claim still fails under prong two of *Saucier.*[13] In *Reichle,* the Supreme Court held that it had never recognized, nor was there a clearly established First Amendment right to be free from a retaliatory arrest that is otherwise supported by probable cause. *Reichle,* 132 S.Ct. at 2097 ("[I]t was not clearly established that an arrest supported by probable cause could give rise to a First Amendment violation."). Furthermore, at the time of the Council meeting, our precedent had previously upheld restrictions on speech at city council meetings where the speech was actually disruptive and this remains the law. *See City of Norwalk,* 900 F.2d at 1425; *Kindt v. Santa Monica Rent Control Bd.,* 67 F.3d 266, 270 (9th Cir.1995). Thus, if Acosta's seizure and arrest were supported by probable cause, the officers are entitled to qualified immunity.

[32] **[33]** **[34]** All seizures, except a narrowly defined intrusion such as the one in *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), are reasonable only if the seizure is supported by probable cause. *Dunaway v. New York,* 442 U.S. 200, 214, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979). To determine whether there was probable cause, we look to "the totality of circumstances known to the arresting officers, [to determine if] a prudent person would have concluded that there was a fair probability that [the defendant] had committed a crime." *United States v. Smith,* 790 F.2d 789, 792 (9th Cir.1986). While evidence supporting probable cause need not be admissible in court, it must be "legally sufficient and reliable." *Franklin v. Fox,* 312 F.3d 423, 438 (9th Cir.2002).

Violations of §§ 2–61 and 2–64 are misdemeanors and a person in violation of either ordinance can be arrested. Section 2–61(b)(5) requires every person addressing the Council to "comply with and obey the lawful orders or directions of the presiding officer." Here, the Mayor first indicated that he did not want Acosta to ask people to stand up in a show of support, but Acosta defiantly continued to encourage the audience to stand. Then the Mayor called for a recess to end his disruptive behavior. Acosta remained at the podium and continued to speak after the Mayor called the recess.

Given these undisputed facts, we find that probable cause existed to arrest Acosta for a violation of § 2–61 and summary judgment was properly granted in favor of the officers on this claim.[14] Thus, even assuming that Acosta was arrested in retaliation ***826** for his remarks, because probable cause existed for a violation of § 2–61, the officers are still entitled to qualified immunity, not only for the removal of Acosta from the chambers, but also for his subsequent arrest. Summary judgment was properly granted in favor of the officers. The remaining question we must answer is whether the officers employed excessive force when enacting the seizure and arrest.

C

[35] **[36]** When effecting an arrest, the Fourth Amendment requires that officers use only such force as is "objectively reasonable" under the circumstances. *Jackson v. City of Bremerton,* 268 F.3d 646, 651 (9th Cir.2001). To determine whether the force used was reasonable, we must balance "the nature and quality of the intrusion on the individual's Fourth Amendment interest against the countervailing governmental interests at stake." *Graham v. Connor,* 490 U.S. 386, 396–97, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) (internal quotation marks omitted). Furthermore, the reasonableness must be judged from the perspective of a reasonable officer on the scene and allow for the fact that officers often have to make split-second decisions under evolving and uncertain circumstances. *Jackson,* 268 F.3d at 651.

[37] **[38]** We find that there was no excessive force here as a matter of law. The undisputed evidence shows that the officers used only the force reasonably necessary to remove Acosta from the meeting and no reasonable jury could find excessive force as a matter of law based on that evidence. The video submitted by Acosta shows that he did not leave the podium when first asked to step down and the crowd began yelling both in support and opposition to Acosta. He also concedes that he did not leave the podium immediately. Considering the volatility of the situation and the presence of a large crowd of hostile demonstrators, the amount of force the officers used—grabbing Acosta's arms and placing him in an upper body control hold—was reasonable. Furthermore, when later placing Acosta under arrest, Acosta was kicking and flailing his body to actively resist the police. Holding him by his limbs to control him and prevent him from injuring an officer was also not unreasonable or excessive. Therefore, Acosta fails to meet prong one of *Saucier* and qualified immunity was properly granted to the officers on Acosta's excessive force claim.

V

Acosta asserts that it was error for the district court to admit his December 2005 remarks before the City Council in which he called the Mayor a "fucking racist pig." The district court denied Acosta's motion in limine to exclude these remarks, concluding that they were relevant to the reasonableness of the Mayor's conduct at the January 2006 meeting in recalling how Acosta behaved when addressing the Council at its December meeting. Acosta argues the district court further erred by failing to give his suggested limiting instruction:

> Evidence of the plaintiff's speech or conduct at the December 6, 2005 meeting cannot be considered for the purpose of proving that he is disruptive and that he acted in conformity with that character on January 3, 2006.

The district court rejected this argument in its order denying Acosta's motion for a new trial on grounds that Acosta failed to raise an objection to the error pursuant to Federal Rule of Civil Procedure 51(c)(1). The court had previously rejected the suggested limiting instruction finding the December statement "absolutely an act in ***827** conformity" and "highly relevant" to the January 3, 2006, meeting.

A

[39] **[40]** We accord the district court "wide discretion in determining the admissibility of evidence under the Federal Rules."[15] *United States v. Abel,* 469 U.S. 45, 54, 105 S.Ct. 465, 83 L.Ed.2d 450 (1984). "Assessing the probative value of [the proffered evidence], and weighing any factors counseling against admissibility is a matter first for the district court's sound judgment under Rules 401 and 403...." *Id.* Furthermore, to reverse on the basis of an erroneous evidentiary ruling, we must conclude that the error was prejudicial. *See Harper v. City of Los Angeles,* 533 F.3d 1010, 1030 (9th Cir.2008).

[41] Assuming that Acosta's December 2006 remarks were admitted to show conformity with a disruptive character, Acosta has failed to show prejudice resulting from this error.[16] Three videos depicting *exactly* how Acosta acted at the January 3, 2006, meeting were admitted into evidence. Having the additional videos detracts from both the significance of the December statements in comparison to the January evidence before the jury and any potential prejudice to the outcome of the trial. Furthermore, the jury was specifically instructed that conduct—and not words—could be the only basis for finding whether Acosta "substantially disrupted" the meeting. Given the overwhelming evidence of Acosta's actual disruptive behavior at the January meeting and because the instructions as given included limitations on how pure speech could not be used to support a finding that Acosta was *actually* disruptive, there is no reason to believe that the outcome of his trial was affected by the admission of the evidence. Thus, Acosta fails to show prejudice caused

by the admission of the statement and we affirm the district court's denial of the motion for new trial.

B

[42] **[43]** We also review the district court's rejection of a proposed jury instruction for an abuse of discretion. *See Jones v. Williams,* 297 F.3d 930, 934–35 (9th Cir.2002); *Duran v. City of Maywood,* 221 F.3d 1127, 1130–31 (9th Cir.2000). Any error in instructing the jury in a civil case does not require reversal if it is harmless. *See Altera Corp. v. Clear Logic, Inc.,* 424 F.3d 1079, 1087 (9th Cir.2005).

[44] Acosta argues the court erred by rejecting Acosta's instruction for the reason that the contested evidence was "absolutely an act in conformity, and it is highly relevant to Mr. Acosta's actions on January 3rd, 2006." *See* Fed.R.Evid. 404(a)(1) ("Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait."). If the district court's refusal to ***828** give the instruction was error, it was harmless because, as we have already noted, the district court provided an instruction that made the distinction between pure speech and speech that accompanies conduct. The instructions further specifically noted that Acosta's claims derived from the January 3, 2006, meeting. When the subsequent instructions refer to conduct, the reference was to Acosta's conduct at the January 3, 2006, meeting.

Considering the jury instructions as a whole, the jury was properly instructed to consider only Acosta's conduct at the January 3, 2006, meeting when deciding whether he caused an actual disturbance. Thus, any error was harmless. This conclusion is further bolstered by ample evidence in the record that supports the jury's finding that Acosta actually did disrupt the January 3, 2006, meeting by defying the Mayor's order that he cease speaking.

VI

[45] Next, Acosta argues that the district court erred in denying his renewed motion for judgment as a matter of law. He argues that there was not substantial evidence to support the jury's verdict on his First Amendment claims. We review de novo the district court's grant or denial of a renewed motion for judgment as a matter of law. *See Theme Promotions, Inc. v. News Am. Mktg. FSI,* 546 F.3d 991, 999 (9th Cir.2008). We ask whether the evidence, construed in the light most favorable to the nonmoving party permits only one reasonable conclusion, and that conclusion is contrary to the jury's verdict. *See Martin v. Cal. Dep't of Veterans Affairs,* 560 F.3d 1042, 1046 (9th Cir.2009). We must also draw all reasonable inferences in favor of the defendants, keeping in mind that "credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) (internal quotation marks omitted).

[46] Here, the jury returned a verdict in favor of the defendants. The evidence presented at trial is easily interpreted to support a reasonable jury's determination that the Mayor neutrally and constitutionally applied the City's decorum rules to Acosta. Contrary to Acosta's assertion that the evidence shows the Mayor only feared a disruption and not that an actual disruption occurred, the properly instructed jury could certainly have found that the meeting was actually disrupted by Acosta addressing the audience and the audience's reaction to his urging them to stand. Indeed, the Mayor called an unplanned recess to diffuse the disruption. Acosta was not entitled to judgment as a matter of law and we affirm the district court's denial of his post-trial motion.

VII

[47] Finally, Acosta appeals the district court's denial of his request for a declaration that the defendants failed to apply §§ 2–61 and 2–64 in a constitutional manner at the January 3, 2006, meeting. The district court's decision to deny equitable relief is reviewed for an abuse of discretion. *See Molski v. Foley Estates Vineyard & Winery, LLC,* 531 F.3d 1043, 1046 (9th Cir.2008).

[48] The Seventh Amendment provides that "no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." U.S. Const. amend. VII. In our circuit, "it would be a violation of the Seventh Amendment right to jury trial for the court to disregard a jury's finding of fact." *Floyd v. Laws,* 929 F.2d 1390, 1397 (9th Cir.1991). "Thus, in a case ***829** where legal claims are tried by a jury and equitable claims are tried by a judge, and the claims are 'based on the same facts,' in deciding the equitable claims 'the Seventh Amendment requires the trial judge to follow the jury's implicit or explicit

factual determinations.' " *L.A. Police Protective League v. Gates,* 995 F.2d 1469, 1473 (9th Cir.1993) (quoting *Miller v. Fairchild Indus.,* 885 F.2d 498, 507 (9th Cir.1989)).

[49] Jury instructions numbers 14 and 15 specifically instructed the jurors to assess liability against the Mayor and the City upon finding that either or both deprived Acosta of his rights under the First Amendment. Instruction number 27 also stated that in enforcing §§ 2–61 and 2–64, the mayor could "bar a speaker from further audience ... only if the speaker's activity itself—and *not the viewpoint* of the activity's expression—substantially impaired the conduct of the meeting." The jury rendered a verdict for the defendants. As such, the jury necessarily found that Acosta caused an actual disturbance. Considering this factual finding, it would be incongruous to declare that the defendants enforced the ordinances in an unconstitutional manner. We affirm the district court's denial of equitable relief.

VIII

Section 2–61 is facially overbroad and therefore invalid, and the offensive words cannot be excised from the ordinance. As to Acosta's remaining claims, we find no reversible error. The evidence amply supported the jury's verdict that Acosta caused an actual disruption of the City Council meeting.

REVERSED in part and AFFIRMED in part. The parties will bear their own costs on appeal.

All Citations

718 F.3d 800, 13 Cal. Daily Op. Serv. 4481, 2013 Daily Journal D.A.R. 5738

Footnotes

* The Honorable Dee V. Benson, District Judge for the U.S. District Court for the District of Utah, sitting by designation.

1 The officers pertinent to the appeal are Lieutenant David Andersen, Sergeant Bryan Glass, and Officers David DeHuff, and Daniel Guth, the officers who physically ejected Acosta from the meeting after Chief Hensley directed Acosta's removal when he failed to cease his disruptive activities as requested by the Mayor.

2 "The Ralph M. Brown Act, [California Government Code § 54950 *et seq.*], is designed to encourage public participation in government." *Coal. of Labor, Agric. & Bus. v. County of Santa Barbara Bd. of Supervisors,* 129 Cal.App.4th 205, 28 Cal.Rptr.3d 198, 199 (2005). Section 54954.3(a) governs the circumstances under which the public must be allowed to address a local legislative body. It provides in part: "Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body...."

3 Acosta submitted a DVD that shows Acosta's remarks at the December 6, 2005, meeting. Three DVDs of the January 3, 2006, meeting were introduced into evidence. Acosta submitted one DVD that shows the relevant portions of proposal supporter Jim Gilchrist's speech and Acosta's speech in opposition. It also includes local news footage taken once Acosta was removed from the chambers. Acosta also submitted a DVD of footage taken by an immigration watch dog group. This DVD depicts the meeting from a different angle that includes more footage of the audience. Appellees submitted a DVD that shows the entire hour of the council meeting up to Acosta's removal and includes the Mayor's opening warning to all participants that they could be removed for causing a disturbance.

4 Costa Mesa Municipal Code § 2–63 authorizes inquiry into speaker representation: "In order to expedite matters and to avoid repetitious presentations, whenever any group of persons wishes to address the council on the same subject matter, it shall be proper for the presiding officer to inquire whether or not the group has a spokesman and if so, that he be heard with the following speakers in the group to be limited to facts not already presented by the group spokesman."

5 We can determine that the jury made this finding by analyzing the jury instructions. *See Weeks v. Angelone,* 528 U.S. 225, 234, 120 S.Ct. 727, 145 L.Ed.2d 727 (2000) ("A jury is presumed to follow its instructions."). Jury Instruction No. 27 provided that "In enforcing Costa Mesa Municipal Code sections 2–61 and 2–64, the defendant Alan Mansoor may bar a speaker from further audience before the City council only if the speaker's activity itself ... substantially impairs the conduct of the meeting." Jury Instruction No. 28 further provided that "Whether a given instance of alleged misconduct substantially impairs the effective conduct of a meeting depends on the actual impact of that conduct on the course of the meeting." Finally, Jury Instruction No. 29 stated that "A speaker may not be removed from a meeting solely because of the use of profanity unless the use of profanity actually disturbs or impedes the meeting." Thus, to conclude that

Mayor Mansoor did not violate Acosta's First Amendment rights, the jury must have concluded that Acosta's conduct substantially impaired the conduct of the meeting.

6 The ordinance may reach protected speech, even though it uses the words "action" or "behavior." The Supreme Court has frequently rejected attempts to regulate speech under the guise of regulating conduct. *See Cohen v. California,* 403 U.S. 15, 18, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971) ("The only 'conduct' which the State sought to punish is the fact of communication."); *Texas v. Johnson,* 491 U.S. 397, 416, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989) ("The distinction between written or spoken words and nonverbal conduct ... is of no moment where the nonverbal conduct is expressive, as it is here, and where the regulation of that conduct is *related to expression,* as it is here." (emphasis added)). Thus, because certain "remarks" or "behavior" can be unlawful merely because of their expressive nature, the conclusion that the ordinance reaches only "conduct" is not a narrowing construction that will save it.

7 This feature of the ordinance further distinguishes it from the ordinance at issue in *City of Norwalk,* which authorized police officers to "remove" someone from a city council meeting only upon an "order" from the presiding officer. 900 F.2d at 1424.

8 Furthermore, because subsection (a) authorizes the presiding officer at a meeting to "bar from further audience before the council, or have removed from the council chambers, any person who commits ... insolent ... behavior," subsection (a) itself is constitutionally infirm. The unqualified term "insolent" in subsection (a) opens the door to discrimination based on viewpoint, just like the term "insolent" in subsection (b)(1).

9 It is unnecessary to determine whether all of subsection (b)(1) is invalid, because its prohibition on slander, which is unprotected by the First Amendment, *see Ashcroft v. Free Speech Coal.,* 535 U.S. 234, 245–46, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002), does not raise any constitutional concerns. Additionally, though subsection (b)(6) also contains the term "insolent," it does not prohibit such speech unless it "substantially delay[s], interrupt[s], or disturb[s] the proceedings of the council." Costa Mesa, Cal., Mun.Code § 2–61(b)(6). Arguably, this satisfies *Norse's* actual disturbance requirement and—because Acosta does not address it—we will not analyze it further.

10 At oral argument, the City made an offhand remark that it favored severance over complete invalidation. It neither briefed this argument, nor raised it below. Regardless, it does not effect our view of volitional severability. California courts look to what the intentions were of the enacting body *at the time of enactment* to determine whether volitional severability is met. *See Gerken v. Fair Political Practices Comm'n,* 6 Cal.4th 707, 25 Cal.Rptr.2d 449, 863 P.2d 694, 699 (1993). They do not look to the *post hoc* litigating position taken by the government with respect to what should be done to the statute. In fact, it is likely in most cases where a municipal enactment is invalidated that the enacting municipality would prefer severance to complete invalidation. *See, e.g., Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach,* 14 Cal.App.4th 312, 17 Cal.Rptr.2d 861, 868 (1993) (stating municipal defendant's argument in favor of severance of unconstitutional part of statute rather than complete invalidation). The fact that the City in this case took just such a position is unremarkable and is not relevant to determining what the City intended when it enacted this provision.

11 In *Katz v. Children's Hospital of Orange Cnty.,* 28 F.3d 1520, 1531 (9th Cir.1994), we were willing to interpret the statutory language "to mean something other than what it says," only because a previous California court had already interpreted the statute in that way. We have no such precedent here.

12 Nor does Acosta argue that we should recognize a constitutional tort action for damages based upon a violation of article I, § 2 of the California Constitution. Without deciding the issue, we note that the companion cases of *Degrassi v. Cook,* 29 Cal.4th 333, 127 Cal.Rptr.2d 508, 58 P.3d 360 (2002), and *Katzberg v. Regents of University of California,* 29 Cal.4th 300, 127 Cal.Rptr.2d 482, 58 P.3d 339, 350 (2002), suggest that there is no basis to recognize a constitutional tort action for damages for a violation of article I, § 2. Indeed, much like the plaintiff in *Degrassi,* 127 Cal.Rptr.2d 508, 58 P.3d at 366, alternative adequate remedies were readily available to Acosta under both the California Civil Procedure Code § 1085 and the Ralph Brown Act, Government Code § 54960. *See* Cal. Gov't Code § 54960 ("The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter....").

13 The arresting officers testified that Acosta was not under arrest when they asked him to exit the Council Chambers. The decision to arrest him was not made until Acosta began physically resisting the officers after he was removed and was outside chambers. Acosta offered no evidence to contest these assertions.

14 We note that if we were to find that no probable cause existed, the officers would still be entitled to qualified immunity. An officer is entitled to immunity where a reasonable officer would believe that probable cause existed, even if that determination was a mistake. *See Anderson,* 483 U.S. at 641, 107 S.Ct. 3034; *Smiddy v. Varney,* 665 F.2d 261, 266 (9th Cir.1981), *overruled on different grounds by Beck v. City of Upland,* 527 F.3d 853, 865 (9th Cir.2008). Here, given the Mayor's repeated directives to cease speaking, the fact that the council meeting was now in recess, and the undisputed

fact that Acosta remained at the podium addressing both the audience and the council, a reasonable officer would have believed that probable cause existed to arrest Acosta for a violation of § 2–61.

15 The remaining three issues relate to Acosta's as-applied challenge that was before the jury. For the reasons set forth in Part III A, our determination that § 2–61 is facially overbroad does not require reversal of the district court on any of these issues.

16 It is questionable whether the evidence was in fact offered to prove a character trait. The district court initially admitted the evidence as relevant to the Mayor's state of mind when exercising his discretion in enforcing the City's ordinances and Acosta points to nowhere in the trial record where the appellees actually argue that Acosta had a disruptive character. It ignores common experience to suggest the presiding officer would not have been influenced by his knowledge of Acosta from the December address. Judges certainly experience this in the their courtrooms when lawyers approach the podium who are known to the court from prior appearances.

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91 S.Ct. 1780
Supreme Court of the United States

Paul Robert COHEN, Appellant,

v.

State of CALIFORNIA.

No. 299.
|
Argued Feb. 22, 1971.
|
Decided June 7, 1971.

Synopsis

The defendant was convicted before the Superior Court of Los Angeles County of the offense of disturbing the peace and he appealed. The Court of Appeal, Second District, 1 Cal.App.3d 94, 81 Cal.Rptr. 503, affirmed the conviction, and the defendant appealed. The Supreme Court, Mr. Justice Harlan, held, inter alia, that conviction of defendant who walked through courthouse corridor wearing jacket bearing the words 'Fuck the Draft' in a place where women and children were present of breach of the peace under California statute prohibiting disturbance of the peace by offensive conduct could not be justified either upon theory that the quoted words were inherently likely to cause violent reaction or upon more general assertion that the states, acting as guardians of public morality, may properly remove such offensive word from the public vocabulary since the state may not, consistently with the First and Fourteenth Amendments, make the simple public display involved of the single four-letter expletive a criminal offense.

Reversed.

Mr. Justice Blackmun, dissented and filed an opinion in which Mr. Chief Justice Burger, and Mr. Justice Black joined and in which Mr. Justice White joined in part.

West Headnotes (16)

[1] **Federal Courts** Validity of state constitution or statutes

Where throughout the proceedings in state courts the defendant consistently claimed that, as construed to apply to facts of the case, California breach of the peace statute infringed his rights to freedom of expression guaranteed by First and Fourteenth Amendments, and that contention had been rejected by highest California state court in which review could be had, defendant properly invoked Supreme Court's jurisdiction by his appeal. West's Ann.Cal.Pen.Code, § 415; U.S.C.A.Const. Amends. 1, 14; 28 U.S.C.A. § 1257(2).

17 Cases that cite this headnote

[2] **Constitutional Law** Selective service and the draft

Disorderly Conduct Signs and displays; gestures

Where defendant, who walked through courthouse corridor wearing jacket bearing the words "Fuck the Draft" in a place where women and children were present, was convicted of disturbing the peace under California statute prohibiting disturbing the peace by offensive conduct, the only "conduct" which the state sought to punish was the fact of communication; thus conviction rested solely upon "speech", not upon any separately identifiable conduct which allegedly was intended by defendant to be perceived by others as expressive of particular views but which, on its face, did not necessarily convey any message and hence arguably could be regulated without effectively repressing defendant's ability to express himself. West's Ann.Cal.Pen.Code, § 415; U.S.C.A.Const. Amends. 1, 14.

99 Cases that cite this headnote

[3] **Constitutional Law** Selective service and the draft

Constitutional Law Disorderly conduct and breach of the peace

Where defendant walked through courthouse corridor wearing jacket bearing the words "Fuck the Draft" in place where women and children were present, California lacked power to punish defendant for underlying content of message the inscription conveyed; at least

so long as there was no showing of an intent to incite disobedience to or disruption of the draft, defendant could not, consistently with the First and Fourteenth Amendments, be punished for asserting the evident position on the inutility or immorality of the draft his jacket reflected. West's Ann.Cal.Pen.Code, § 415; U.S.C.A.Const. Amends. 1, 14.

42 Cases that cite this headnote

[4] **Constitutional Law** Absolute nature of right

Constitutional Law Speech, press, assembly, and petition

The First and Fourteenth Amendments do not give absolute protection to every individual to speak whenever or wherever he pleases, or to use any form of address in any circumstances that he chooses. U.S.C.A.Const. Amends. 1, 14.

65 Cases that cite this headnote

[5] **Disorderly Conduct** Constitutional and statutory provisions

Disorderly Conduct Location or proximity; public place

Disorderly Conduct Signs and displays; gestures

Breach of the peace conviction of defendant who walked through courthouse corridor wearing jacket bearing the words "Fuck the Draft" in place where women and children were present could not be supported on ground that California statute prohibiting the disturbing of the peace by offensive conduct sought to preserve an appropriate decorous atmosphere in courthouse where defendant was arrested, in absence of language in statute that would have put defendant on notice that certain kinds of otherwise permissible speech or conduct would nevertheless, under California law, not be tolerated in certain places; the phrase "offensive conduct" could not be said sufficiently to inform the ordinary person that distinctions between certain locations were thereby created. West's Ann.Cal.Pen.Code, § 415.

24 Cases that cite this headnote

[6] **Obscenity** Definitions; Test for Obscenity

Whatever else may be necessary to give rise to the states' broader power to prohibit obscene expression, such expression must be, in some significant way, erotic. U.S.C.A.Const. Amends. 1, 14.

28 Cases that cite this headnote

[7] **Disorderly Conduct** Signs and displays; gestures

Breach of the peace conviction of defendant who walked through courthouse corridor wearing jacket bearing the words "Fuck the Draft" in place where women and children were present could not be justified on theory of state'spower to prohibit obscene expression, since it could not plausibly be maintained that the vulgar illusion to the selective service system would conjure up such psychic stimulation in anyone likely to be confronted with defendant's crudely defaced jacket. West's Ann.Cal.Pen.Code, § 415; U.S.C.A.Const. Amends. 1, 14.

134 Cases that cite this headnote

[8] **Disorderly Conduct** Signs and displays; gestures

Breach of the peace conviction of defendant who walked through courthouse corridor wearing jacket bearing the words "Fuck the Draft" in place where women and children were present could not be justified on theory that states may ban simple use, without demonstration of additional justifying circumstances, of so-called "fighting words" which are inherently likely to provoke violent reaction, where no individual actually or likely to be present could reasonably have regarded the words on the jacket as a direct personal insult, and there was no showing that anyone who saw defendant was in fact violently aroused or that defendant intended such a result. West's Ann.Cal.Pen.Code, § 415; U.S.C.A.Const. Amends. 1, 14.

237 Cases that cite this headnote

[9] **Constitutional Law** Offensive, vulgar, abusive, or insulting speech

The mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense. U.S.C.A.Const. Amends. 1, 14.

17 Cases that cite this headnote

[10] **Constitutional Law** Receipt of information or ideas; listeners' rights

The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner; any broader view of this authority would effectively empower a majority to silence dissidents simply as a matter of personal predilections. U.S.C.A.Const. Amends. 1, 14.

130 Cases that cite this headnote

[11] **Disorderly Conduct** Requisites of annoyance or disturbance in general

Disorderly Conduct Signs and displays; gestures

If defendant's "speech" consisting of the words "Fuck the Draft" on jacket which defendant wore in courthouse corridor was otherwise entitled to constitutional protection, fact that some unwilling "listeners" might have been briefly exposed to it could not serve to justify conviction of breach of the peace, where there was no evidence that persons powerless to avoid defendant's conduct did in fact object to it, and where portion of statute upon which defendant's conviction rested evinced no concern, either on its face or as construed by California courts, with special plight of captive auditor, but, instead, indiscriminately swept within its prohibitions all "offensive conduct" that disturbed "any neighborhood or person." West's Ann.Cal.Pen.Code, § 415; U.S.C.A.Const. Amends. 1, 14.

32 Cases that cite this headnote

[12] **Constitutional Law** Incitement or encouragement of crime or lawless action

An undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. U.S.C.A.Const. Amends. 1, 14.

11 Cases that cite this headnote

[13] **Constitutional Law** Content-Based Regulations or Restrictions

Most situations where the state has a justifiable interest in regulating speech will fall within one or more of various established exceptions to usual rule that governmental bodies may not prescribe the form or content of individual expression. U.S.C.A.Const. Amends. 1, 14.

16 Cases that cite this headnote

[14] **Constitutional Law** Freedom of Speech, Expression, and Press

The constitutional right of free expression is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests. U.S.C.A.Const. Amends. 1, 14.

77 Cases that cite this headnote

[15] **Constitutional Law** Content-Based Regulations or Restrictions

Supreme Court cannot sanction the view that the Constitution, while solicitous of the cognitive content of the individual speech, has little or no regard for that motive function which, practically speaking, may often be the more important

element of the overall message sought to be communicated. U.S.C.A.Const. Amends. 1, 14.

25 Cases that cite this headnote

[16] **Constitutional Law** Profanity or swearing
Constitutional Law Selective service and the draft
Constitutional Law Disorderly conduct and breach of the peace
Disorderly Conduct Signs and displays; gestures

The conviction of defendant who walked through courthouse corridor wearing jacket bearing the words "Fuck the Draft" in a place where women and children were present of breach of the peace under California statute prohibiting disturbance of the peace by offensive conduct could not be justified either upon theory that the quoted words were inherently likely to cause violent reaction or upon more general assertion that the states, acting as guardians of public morality, may properly remove such offensive word from the public vocabulary since the state may not, consistently with the First and Fourteenth Amendments, make the simple public display involved of the single four-letter expletive a criminal offense. West's Ann.Cal.Pen.Code, § 415; U.S.C.A.Const. Amends. 1, 14.

221 Cases that cite this headnote

**1783 Syllabus*

*15 Appellant was convicted of violating that part of Cal. Penal Code s 415 which prohibits 'maliciously and willfully disturb(ing) the peace or quiet of any neighborhood or person * * * by * * * offensive conduct,' for wearing a jacket bearing the words 'Fuck the Draft' in a corridor of the Los Angeles Courthouse. The Court of Appeal held that 'offensive conduct' means 'behavior which has a tendency to provoke others to acts of violence or to in turn disturb the peace,' and affirmed the conviction. Held: Absent a more particularized and compelling reason for its actions, the State may not, consistently with the First and Fourteenth Amendments, make the simple public display of this single four-letter expletive a criminal offense. Pp. 1787—1789.

1 Cal.App.3d 94, 81 Cal.Rptr. 503, reversed.

Attorneys and Law Firms

Melville B. Nimmer, Los Angeles, Cal., for appellant.

Michael T. Sauer, Los Angeles, Cal., for appellee.

Opinion

Mr. Justice HARLAN delivered the opinion of the Court.

This case may seem at first blush too inconsequential to find its way into our books, but the issue it presents is of no small constitutional significance.

*16 Appellant Paul Robert Cohen was convicted in the Los Angeles Municipal Court of violating that part of California Penal Code s 415 which prohibits 'maliciously and willfully disturb(ing) the peace or quiet of any neighborhood or person * * * by * * * offensive conduct * * *.'[1] He was given 30 days' imprisonment. The facts upon which his conviction rests are detailed in the opinion of the Court of Appeal of California, Second Appellate District, as follows:
'On April 26, 1968, the defendant was observed in the Los Angeles County **1784 Courthouse in the corridor outside of division 20 of the municipal court wearing a jacket bearing the words 'Fuck the Draft' which were plainly visible. There were women and children present in the corridor. The defendant was arrested. The defendant testified that he wore the jacket knowing that the words were on the jacket as a means of informing the public of the depth of his feelings against the Vietnam War and the draft.
'The defendant did not engage in, nor threaten to engage in, nor did anyone as the result of his conduct *17 in fact commit or threaten to commit any act of violence. The defendant did not make any loud or unusual noise, nor was there any evidence that he uttered any sound prior to his arrest.' 1 Cal.App.3d 94, 97—98, 81 Cal.Rptr. 503, 505 (1969).

In affirming the conviction the Court of Appeal held that 'offensive conduct' means 'behavior which has a tendency to provoke others to acts of violence or to in turn disturb the peace,' and that the State had proved this element because,

on the facts of this case, '(i)t was certainly reasonably foreseeable that such conduct might cause others to rise up to commit a violent act against the person of the defendant or attempt to forceably remove his jacket.' 1 Cal.App.3d, at 99—100, 81 Cal.Rptr., at 506. The California Supreme Court declined review by a divided vote.[2] We brought the case here, postponing the consideration of the question of our jurisdiction over this appeal to a hearing of the case on the merits. 399 U.S. 904, 90 S.Ct. 2211, 26 L.Ed.2d 558. We now reverse.

[1] The question of our jurisdiction need not detain us long. Throughout the proceedings below, Cohen consistently ***18** claimed that, as construed to apply to the facts of this case, the statute infringed his rights to freedom of expression guaranteed by the First and Fourteenth Amendments of the Federal Constitution. That contention has been rejected by the highest California state court in which review could be had. Accordingly, we are fully satisfied that Cohen has properly invoked our jurisdiction by this appeal. 28 U.S.C. s 1257(2); Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 42 S.Ct. 106, 66 L.Ed. 239 (1921).

I

In order to lay hands on the precise issue which this case involves, it is useful first to canvass various matters which this record does not present.

[2] **[3]** The conviction quite clearly rests upon the asserted offensiveness of the words Cohen used to convey his message to the public. The only 'conduct' which the State sought to punish is the fact of communication. Thus, we deal here with a conviction resting solely upon 'speech,' cf. Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931), not upon any separately identifiable conduct which allegedly was intended by Cohen to be perceived by others as expressive of particular views but which, on its face, does not necessarily convey any message and hence arguably could be regulated without effectively repressing Cohen's ability to express himself. Cf. ****1785** United States v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968). Further, the State certainly lacks power to punish Cohen for the underlying content of the message the inscription conveyed. At least so long as there is no showing of an intent to incite disobedience to or disruption of the draft, Cohen could not, consistently with the First and Fourteenth Amendments, be punished for asserting the evident position on the inutility or immorality of the draft his jacket reflected. Yates v. United States, 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed.2d 1356 (1957).

***19** **[4]** Appellant's conviction, then, rests squarely upon his exercise of the 'freedom of speech' protected from arbitrary governmental interference by the Constitution and can be justified, if at all, only as a valid regulation of the manner in which he exercised that freedom, not as a permissible prohibition on the substantive message it conveys. This does not end the inquiry, of course, for the First and Fourteenth Amendments have never been thought to give absolute protection to every individual to speak whenever or wherever he pleases or to use any form of address in any circumstances that he chooses. In this vein, too, however, we think it important to note that several issues typically associated with such problems are not presented here.

[5] In the first place, Cohen was tried under a statute applicable throughout the entire State. Any attempt to support this conviction on the ground that the statute seeks to preserve an appropriately decorous atmosphere in the courthouse where Cohen was arrested must fail in the absence of any language in the statute that would have put appellant on notice that certain kinds of otherwise permissible speech or conduct would nevertheless, under California law, not be tolerated in certain places. See Edwards v. South Carolina, 372 U.S. 229, 236—237, 83 S.Ct. 680, 683—684, 9 L.Ed.2d 697, and n. 11 (1963). Cf. Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966). No fair reading of the phrase 'offensive conduct' can be said sufficiently to inform the ordinary person that distinctions between certain locations are thereby created.[3]

[6] **[7]** In the second place, as it comes to us, this case cannot be said to fall within those relatively few categories of ***20** instances where prior decisions have established the power of government to deal more comprehensively with certain forms of individual expression simply upon a showing that such a form was employed. This is not, for example, an obscenity case. Whatever else may be necessary to give rise to the States' broader power to prohibit obscene expression, such expression must be, in some significant way, erotic. Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957). It cannot plausibly be maintained that this vulgar allusion to the Selective Service System would conjure up such psychic stimulation in anyone likely to be confronted with Cohen's crudely defaced jacket.

[8] This Court has also held that the States are free to ban the simple use, without a demonstration of additional justifying circumstances, of so-called 'fighting words,' those

personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction. Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942). While the four-letter word displayed by Cohen in relation to the draft is not uncommonly employed in a personally provocative fashion, in this instance it was clearly not 'directed to the person of the hearer.' **1786 Cantwell v. Connecticut, 310 U.S. 296, 309, 60 S.Ct. 900, 906, 84 L.Ed. 1213 (1940). No individual actually or likely to be present could reasonably have regarded the words on appellant's jacket as a direct personal insult. Nor do we have here an instance of the exercise of the State's police power to prevent a speaker from intentionally provoking a given group to hostile reaction. Cf. Feiner v. New York, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 295 (1951); Terminiello v. Chicago, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949). There is, as noted above, no showing that anyone who saw Cohen was in fact violently aroused or that appellant intended such a result.

*21 [9] [10] Finally, in arguments before this Court much has been made of the claim that Cohen's distasteful mode of expression was thrust upon unwilling or unsuspecting viewers, and that the State might therefore legitimately act as it did in order to protect the sensitive from otherwise unavoidable exposure to appellant's crude form of protest. Of course, the mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense. See, e.g., Organization for a Better Austin v. Keefe, 402 U.S. 415, 91 S.Ct. 1575, 29 L.Ed.2d 1 (1971). While this Court has recognized that government may properly act in many situations to prohibit intrusion into the privacy of the home of unwelcome views and ideas which cannot be totally banned from the public dialogue, e.g., Rowan v. United States Post Office Dept., 397 U.S. 728, 90 S.Ct. 1484, 25 L.Ed.2d 736 (1970), we have at the same time consistently stressed that 'we are often 'captives' outside the sanctuary of the home and subject to objectionable speech.' Id., at 738, 90 S.Ct., at 1491. The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is, in other words, dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner. Any broader view of this authority would effectively empower a majority to silence dissidents simply as a matter of personal predilections.

[11] In this regard, persons confronted with Cohen's jacket were in a quite different posture than, say, those subjected to the raucous emissions of sound trucks blaring outside their residences. Those in the Los Angeles courthouse could effectively avoid further bombardment of their sensibilities simply by averting their eyes. And, while it may be that one has a more substantial claim to a recognizable privacy interest when walking through a courthouse corridor than, for example, strolling through Central Park, surely it is nothing like the interest in *22 being free from unwanted expression in the confines of one's own home. Cf. Keefe, supra. Given the subtlety and complexity of the factors involved, if Cohen's 'speech' was otherwise entitled to constitutional protection, we do not think the fact that some unwilling 'listeners' in a public building may have been briefly exposed to it can serve to justify this breach of the peace conviction where, as here, there was no evidence that persons powerless to avoid appellant's conduct did in fact object to it, and where that portion of the statute upon which Cohen's conviction rests evinces no concern, either on its face or as construed by the California courts, with the special plight of the captive auditor, but, instead, indiscriminately sweeps within its prohibitions all 'offensive conduct' that disturbs 'any neighborhood or person.' Cf. Edwards v. South Carolina, supra.[4]

**1787 II

Against this background, the issue flushed by this case stands out in bold relief. It is whether California can excise, as 'offensive conduct,' one particular scurrilous epithet from the public discourse, either upon the theory of the court below that its use is inherently likely to cause violent reaction or upon a more general assertion that the States, acting as guardians of public morality, *23 may properly remove this offensive word from the public vocabulary.

[12] The rationale of the California court is plainly untenable. At most it reflects an 'undifferentiated fear or apprehension of disturbance (which) is not enough to overcome the right to freedom of expression.' Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 508, 89 S.Ct. 733, 737, 21 L.Ed.2d 731 (1969). We have been shown no evidence that substantial numbers of citizens are standing ready to strike out physically at whoever may assault their sensibilities with execrations like that uttered by Cohen. There may be some persons about with such lawless and violent proclivities, but that is an insufficient base upon which to erect, consistently with constitutional values, a governmental power to force persons who wish to ventilate their dissident views into avoiding particular forms

of expression. The argument amounts to little more than the self-defeating proposition that to avoid physical censorship of one who has not sought to provoke such a response by a hypothetical coterie of the violent and lawless, the States may more appropriately effectuate that censorship themselves. Cf. Ashton v. Kentucky, 384 U.S. 195, 200, 86 S.Ct. 1407, 1410, 16 L.Ed.2d 469 (1966); Cox v. Louisiana, 379 U.S. 536, 550—551, 85 S.Ct. 453, 462—463, 13 L.Ed.2d 471 (1965).

Admittedly, it is not so obvious that the First and Fourteenth Amendments must be taken to disable the States from punishing public utterance of this unseemly expletive in order to maintain what they regard as a suitable level of discourse within the body politic.[5] We ***24** think, however, that examination and reflection will reveal the shortcomings of a contrary viewpoint.

[13] **[14]** At the outset, we cannot overemphasize that, in our judgment, most situations where the State has a justifiable interest in regulating speech will fall within one or more of the various established exceptions, discussed above but not applicable here, to the usual rule that governmental bodies may not prescribe the form or content of individual expression. Equally important to our conclusion is the constitutional backdrop against which our decision must be made. The constitutional right of free expression is powerful medicine in a society ****1788** as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests. See Whitney v. California, 274 U.S. 357, 375—377, 47 S.Ct. 641, 648—649, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring).

To many, the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and ***25** even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve. That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength. We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated. That is why '(w)holly neutral futilities * * * come under the protection of free speech as fully as do Keats' poems or Donne's sermons,' Winters v. New York, 333 U.S. 507, 528, 68 S.Ct. 665, 676, 92 L.Ed. 840 (1948) (Frankfurter, J., dissenting), and why 'so long as the means are peaceful, the communication need not meet standards of acceptability,' Organization for a Better Austin v. Keefe, 402 U.S. 415, 91 S.Ct. 1575, 29 L.Ed.2d 1 (1971).

Against this perception of the constitutional policies involved, we discern certain more particularized considerations that peculiarly call for reversal of this conviction. First, the principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet no readily ascertainable general principle exists for stopping short of that result were we to affirm the judgment below. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.

[15] Additionally, we cannot overlook the fact, because it ***26** is well illustrated by the episode involved here, that much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech has little or no regard for that emotive function which practically speaking, may often be the more important element of the overall message sought to be communicated. Indeed, as Mr. Justice Frankfurter has said, '(o)ne of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation.' Baumgartner v. United States, 322 U.S. 665, 673—674, 64 S.Ct. 1240, 1245, 88 L.Ed. 1525 (1944).

Finally, and in the same vein, we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon the censorship of particular words as a convenient guise for banning the

expression of unpopular views. We have been able, as noted above, to discern little **1789 social benefit that might result from running the risk of opening the door to such grave results.

[16] It is, in sum, our judgment that, absent a more particularized and compelling reason for its actions, the State may not, consistently with the First and Fourteenth Amendments, make the simple public display here involved of this single four-letter expletive a criminal offense. Because that is the only arguably sustainable rationale for the conviction here at issue, the judgment below must be reversed.

Reversed.

*27 Mr. Justice BLACKMUN, with whom THE CHIEF JUSTICE and Mr. Justice BLACK join.

I dissent, and I do so for two reasons:

1. Cohen's absurd and immature antic, in my view, was mainly conduct and little speech. See Street v. New York, 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969); Cox v. Louisiana, 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965); Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502, 69 S.Ct. 684, 690, 93 L.Ed. 834 (1949). The California Court of Appeal appears so to have described it, 1 Cal.App.3d 94, 100, 81 Cal.Rptr. 503, 507, and I cannot characterize it otherwise. Further, the case appears to me to be well within the sphere of Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942), where Mr. Justice Murphy, a known champion of First Amendment freedoms, wrote for a unanimous bench. As a consequence, this Court's agonizing over First Amendment values seem misplaced and unnecessary.

2. I am not at all certain that the California Court of Appeal's construction of s 415 is now the authoritative California construction. The Court of Appeal filed its opinion on October 22, 1969. The Supreme Court of California declined review by a four-to-three vote on December 17. See 1 Cal.App.3d, at 104, 81 Cal.Rptr., at 503. A month later, on January 27, 1970, the State Supreme Court in another case construed s 415, evidently for the first time. In re Bushman, 1 Cal.3d 767, 83 Cal.Rptr. 375, 463 P.2d 727. Chief Justice Traynor, who was among the dissenters to his court's refusal to take Cohen's case, wrote the majority opinion. He held that s 415 'is not unconstitutionally vague and overbroad' and further said: '(T)hat part of Penal Code section 415 in question here makes punishable only wilful and malicious conduct that is violent and endangers public safety and order or that creates a clear and present danger that others will engage in violence of that nature.

28 ' * * (It) does not make criminal any nonviolent act unless the act incites or threatens to incite others to violence * * *.' 1 Cal.3d, at 773—774, 83 Cal.Rptr., at 379, 463 P.2d, at 731.

Cohen was cited in Bushman, 1 Cal.3d, at 773, 83 Cal.Rptr., at 378, 463 P.2d, at 730, but I am not convinced that its description there and Cohen itself are completely consistent with the 'clear and present danger' standard enunciated in Bushman. Inasmuch as this Court does not dismiss this case, it ought to be remanded to the California Court of Appeal for reconsideration in the light of the subsequently rendered decision by the State's highest tribunal in Bushman.

Mr. Justice WHITE concurs in Paragraph 2 of Mr. Justice BLACKMUN'S dissenting opinion.

All Citations

403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284

Footnotes

* NOTE: The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 The statute provides in full:
'Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarreling, challenging to fight, or fighting, or who, on the public streets of any unincorporated town, or upon the public highways in such unincorporated town, run any horse race, either for a wager of for amusement, or fire any gun or pistol in such unincorporated town, or use any vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner,

is guilty of a misdemeanor, and upon conviction by any Court of competent jurisdiction shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the County Jail for not more than ninety days, or by both fine and imprisonment, or either, at the discretion of the Court.'

2 The suggestion has been made that, in light of the supervening opinion of the California Supreme Court in In re Bushman, 1 Cal.3d 767, 83 Cal.Rptr. 375, 463 P.2d 727 (1970), it is 'not at all certain that the California Court of Appeal's construction of s 415 is now the authoritative California construction.' Post, at 1789 (BLACKMUN, J., dissenting). In the course of the Bushman opinion, Chief Justice Traynor stated:

'(One may) * * * be guilty of disturbing the peace through 'offensive' conduct (within the meaning of s 415) if by his actions he wilfully and maliciously incites others to violence or engages in conduct likely to incite others to violence. (People v. Cohen (1969) 1 Cal.App.3d 94, 101, 81 Cal.Rptr. 503.)' 1 Cal.3d, at 773, 463 P.2d, at 730.

We perceive no difference of substance between the Bushman construction and that of the Court of Appeal, particularly in light of the Bushman court's approving citation of Cohen.

3 It is illuminating to note what transpired when Cohen entered a courtroom in the building. He removed his jacket and stood with it folder over his arm. Meanwhile, a policeman sent the presiding judge a note suggesting that Cohen be held in contempt of court. The judge declined to do so and Cohen was arrested by the officer only after he emerged from the courtroom. App. 18—19.

4 In fact, other portions of the same statute do make some such distinctions. For example, the statute also prohibits disturbing 'the peace or quiet * * * by loud or unusual noise' and using 'vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner.' See n. 1, supra. This secondquoted provision in particular serves to put the actor on much fairer notice as to what is prohibited. It also buttresses our view that the 'offensive conduct' portion, as construed and applied in this case, cannot legitimately be justified in this Court as designed or intended to make fine distinctions between differently situated recipients.

5 The amicus urges, with some force, that this issue is not properly before us since the statute, as construed, punishes only conduct that might cause others to react violently. However, because the opinion below appears to erect a virtually irrebuttable presumption that use of this word will produce such results, the statute as thus construed appears to impose, in effect, a flat ban on the public utterance of this word. With the case in this posture, it does not seem inappropriate to inquire whether any other rationale might properly support this result. While we think it clear, for the reasons expressed above, that no statute which merely proscribes 'offensive conduct' and has been construed as broadly as this one was below can subsequently be justified in this Court as discriminating between conduct that occurs in different places or that offends only certain persons, it is not so unreasonable to seek to justify its full broad sweep on an alternate rationale such as this. Because it is not so patently clear that acceptance of the justification presently under consideration would render the statute overbroad or unconstitutionally vague, and because the answer to appellee's argument seems quite clear, we do not pass on the contention that this claim is not presented on this record.

Bridget Cornell

From: Thomas E. Lawrence <thomas.edward.lawrence@diplomail.ch>
Sent: Sunday, May 1, 2022 5:27 PM
To: Joanne Marchetta; John Marshall; Marja Ambler; Katherine Hangeland
Cc: Bridget Cornell
Subject: Verizon/Tahoe Seasons New Telecommunications Facility; 3901 Saddle Road, City of South Lake Tahoe, El Dorado County, California; Assessor's Parcel Number 028-231-001, TRPA File Number ERSP2021-0808
Attachments: Heavenly Fiber Plan--Deception.pdf; TC-LTVA-TPC.pdf; NSF Award #0087344.pdf; NSF Award # 9807479.pdf; NSF Award #9796124.pdf; NSF Award #0426879.pdf; Heidi Hill-Drum.pdf; TPC Violating City Ordinance.pdf; Middlebrook Scandal.pdf; Tahoe Chamber PAC—FPPC Form 460_01 04 2022.pdf

Dear Tahoe Regional Planning Agency,

Heidi Hill-Drum has apparently been submitting "staff report" articles for the Tahoe Daily Tribune, that consists of propaganda and false statements. The Tribune, a substantive public relations (PR) enterprise for most Tahoe Chamber of Commerce interests, has a list of guest columnists, anonymous "Staff Reporters," and "Sponsored Content Providers" who provide advertisement material disguised as news—all of whom are advancing political agendas, and none of whom are employed by the newspaper.

She submits one of her fake news articles every other month or so—one this week! In one egregious episode of this, the Tahoe Prosperity Center (TPC) took credit for experimental technology developed **decades ago** by the University of California-San Diego under NSF Grant(s), and long deployed to cover the Cleveland, San Bernardino, and Angles National Forests—HPWREN. Having failed at requisite globally important research, the somewhat disgraced Dr. Graham M. Kent packed up his ocean front office at Scripps (UCSD) and moved to Reno where the tenure standards are frankly lower—to pursue subjective public safety research.

Hedi had Mr. Kent **falsely testify** that the "Angel's Roost" fiber-optically wired cameras needed a macro cell tower at Ski Run Boulevard in order to communicate with the world. Dr. Kent depends on Heidi for funding, and after having fallen on hard times, is clearly for sale. Full UCSD Professors Beatrice Golomb, MD, PhD and David Whelan, PhD would both differ on Kent's baseless opinion that

radiofrquency radiation has no health or environmental effects. UC Berkeley Professor Joel Moskowitz joins this consensus, and even weighed-in on the Tahoe debate. If that somehow weren't enough, add Stanford Professor David A. Relman, MD.

The camera technology tries to replicate 1970's lookout towers, long made obsolete by heavy human presence and by satellite remote sensing. The Forest Service stopped even having volunteers staff lookout facilities around urbanized areas. There are already cameras on many of the peaks, and there is a lot less value than hyped added by "Alert Tahoe." This camera money would have been better spent on getting rapid-response fire aviation resources permanently based at our large airport.

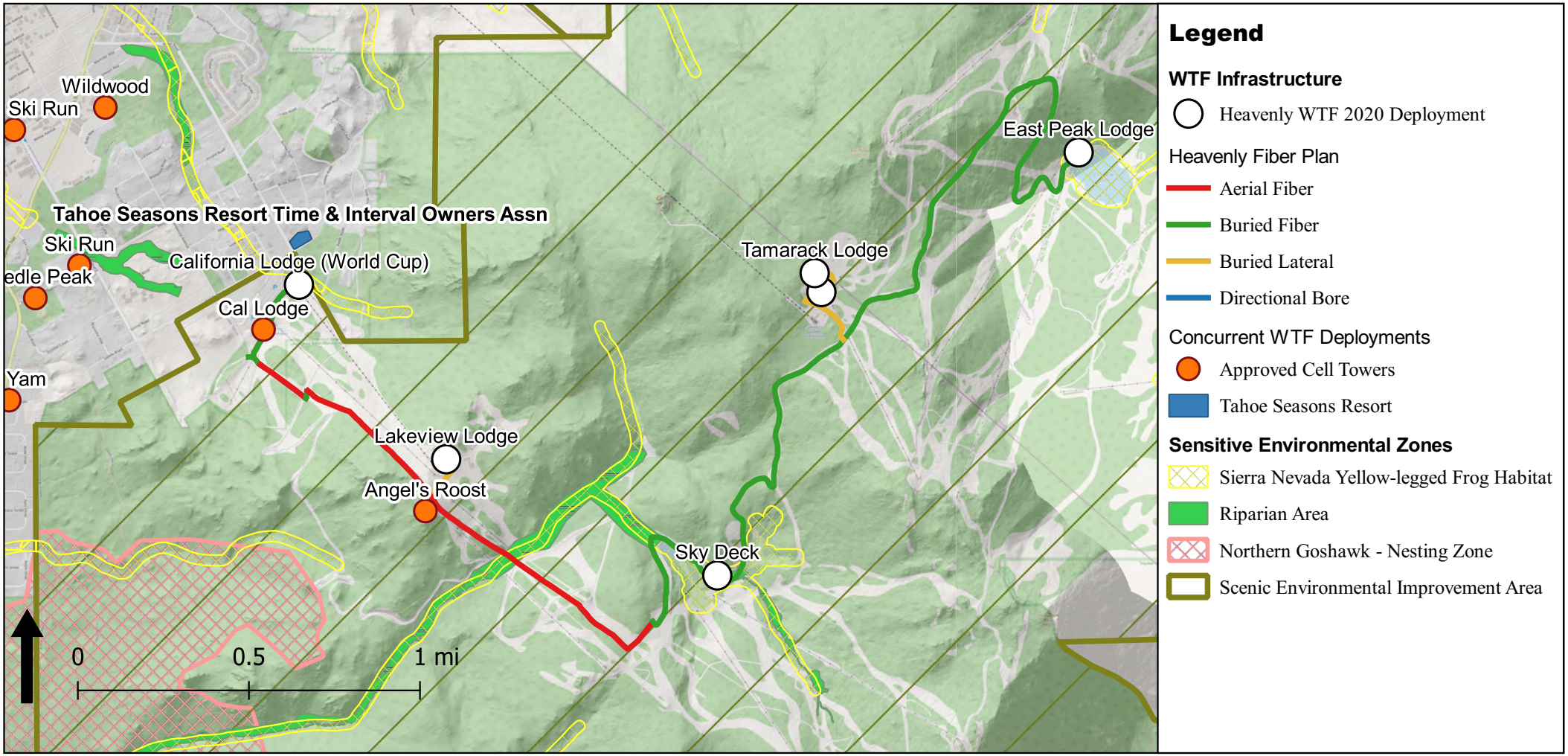
Without notice of authorship to anyone, the TPC had published a Tribune "staff report" falsely claiming to have been "the first" to deploy this technology of vastly overstated importance. So why this article, and why now? Well, it is a timed PR stunt, used to suppress the due diligent questioning of this organization's unethical behavior, at a time when it thirsts for more power.

You can read this public comment's enclosed evidence (double-click if presented as attachments) to discover the cozy relationship the TPC has with the Tahoe Chamber of Commerce and the Lake Tahoe Visitor's Authority (LTVA). They all share the same office space and represent the same interests. Indeed their economic plan—is really Tahoe Chamber CEO Steve Teshara's plan (that's from his website). **This economic plan is a cooked-up political opinion**, enshrouded in a bunch of stilted economic jargon—and the public was not invited to the table by design. They don't want low-income housing built in Nevada, they don't want their businesses to have to pay their employees more. They want California to subsidize all of their exploited employee's needs. As you'll see, I have **deep sources**.

Word.

Thomas E. Lawrence

Verizon's Unfair and Deceptive Business Practice: Concurrent National Forest Deployment



Unfair and Deceptive Business Practices

Verizon and the Tahoe Prosperity Center deceived City of South Lake Tahoe elected leaders, officials, staff, and residents into believing it was too burdensome to deploy towers in the adjacent National Forest lands, while simultaneously using existing special use permits to "fast-track" cell tower deployments and side-step non-discretionalry environmental review of which they had feigned as onerous. This constitutes Unfair and Deceptive Business Practices.

(*See* Business & Professions Code §§ 17200 *et seq.*):

TAHOE PROSPERITY CENTER

Type of Meeting: Board of Directors Meeting

Date/Time: March 23, 2018
9am to 11:00am

Location: South Shore
Tahoe Chamber/LTVA
Join from PC, Mac, Linux, iOS or Android:
https://zoom.us/j/654131552
US: +1 646 876 9923
Meeting ID: 654 131 552

Time	Agenda Topic	Who
9am	Welcome	Walker
9:05	Announcement: • New Board member– Darcie Collins Consent Item: • January Draft Board Meeting minutes Discussion Items: • February 2018 Financials • Board Survey Results • Board Development – Engaging all Board members in TPC work – Board member's commitment to TPC committees, attendance, fundraising, recruitment, etc. How to ensure that the Board is maximizing its strengths, talents and relationships to further TPC's mission and goals.	Walker Lind Hogan Lind Walker
10:00	Committee Reports (In packet – Q&A) • Indicators – review final report, provide input on highlights and messaging and discussion • Workforce Housing	Walker Hill Drum
10:45	Board Member Announcements	All
10:55	Meeting Review and Staff Direction	Hill Drum
11:00	Closed Session (If necessary/reconvene to Open Session) or Adjourn	Lind

Mission: Uniting Tahoe's Communities to Strengthen Regional Prosperity

TAHOE PROSPERITY CENTER

Board Retreat – July 13, 2018
Draft Internal Planning Agenda
Tahoe Chamber Conference Room, 169 Highway 50, Stateline, NV

AGENDA

Goals:

- Develop specific goals and targets for program areas for 2018 and 2019
- Compare organizational goals, needs and the skills, interest and experience of board members
- Energize the board and staff to make great gains in 2018-2019!

#	Time	Topic + Objectives	Roles + Materials
1	8:30	Welcome, introductions and agenda review • Introduce Darcie Goodman Collins	Facilitator
2	8:35	Administration • Approve previous meeting notes • Review financials	Jesse Walker, Board Chair
3	8:50	Setting the stage: Overview of the Tahoe Prosperity Center accomplishments 2012-2017	Jesse Walker, Board Chair
4	9:00	Goals and targets for key indicators Setting targets for: • Housing Tahoe • Workforce Tahoe • Invest in Tahoe • Tahoe Economic Summit	Group Results from Board questionnaires
5	9:45	Thinking big: what can we do with more resources? • What do we need in terms of staff, infrastructure, funding or other resources? • What are reasonable estimates of fundraising capacity?	Facilitator and Heidi Hill Drum present summary of questionnaires Group brainstorming exercise
6	10:15	Break	
7	10:30	Making the most of the board • Exercise: mapping board skills, experience and interests versus TPC needs, goals and opportunities	Facilitator and Heidi Hill Drum present summary of questionnaires Group exercise
8	12:00	Next steps: action items, roles and timelines • Review/adjust subgroups and chairs • Identify tasks and deadlines • Commitments	Action item list
9	12:20	Plan for next Board meeting	
10	12:30	Walk to lunch: • Walk down to Tahoe Beach Club (highlights of some of the potential homes/lots for Tiny Home conversion)	
11	1:00	Lunch Tahoe Beach Club	Thank you Bob!!!

Mission: Uniting Tahoe's Communities to Strengthen Regional Prosperity

IT Pathway to cyber security: The Morgan Family Foundation has a link to a company in the Bay Area and we have recently begun facilitating a conversation for a pathway with LTCC's new Cyber program. Retention of the students in this program is important for our community, so we'll ensure the pathway keeps workers here.

Meeting adjourned at approximately 12:10

TAHOE PROSPERITY CENTER

Board Retreat – July 13, 2018
Draft Meeting Summary
Tahoe Chamber Conference Room, 169 Highway 50, Stateline, NV

DRAFT SUMMARY

Action Items

- Lead a special initiative to recruit a specific economic sector: white hat hackers and other hi-tech digital nomads (B. Stern)
- Next steps for board structure and management (Hill Drum with Executive Committee)
  - Identify a chair for each board subcommittee/working group and establish a schedule of meetings
  - Develop simple draft work plans for 2019 for board review in fall 2018
- Schedule an additional board workshop to focus on board structure, roles, responsibility and participation (Hill Drum and J. Walker)
- The Housing Tahoe subcommittee will meet to finalize next steps on Housing Tahoe (B. Roby)
- Collect and collate housing and workforce assessments, including recent TRPA and other reports (Hill Drum)

Overview

The board met with the following goals for the meeting:

- Develop specific goals for program areas for 2018 and 2019
- Compare organizational goals, needs and the skills, interest and experience of board members
- Energize the board and staff to make great gains in 2018-2019!

The majority of the workshop focused on identifying goals for 2018-2019 for housing, workforce, fundraising and the Economic Summit. Broad goals were identified for each category, along with some specific next steps, though additional work is needed to develop measurable objectives and a work plan. Key goals for the next year included:

- Housing: Conduct/complete an assessment of housing needs in the South Shore
- Workforce: Assess north shore workforce needs; convene Tahoe area colleges to coordinate on training programs and regional resources
- Fundraising: Work toward 100% board participation in fundraising
- Economic Summit: Become revenue generator for TPC

The group began discussion of board roles and board development but this discussion was abbreviated due to lack of time. The goals for next discussions with the board are to:

- Develop a strategy for board participation in fundraising
- Match board member interests, experience, and capacity to TPC needs
- Update membership, roles and work plans for working groups/subcommittees

TAHOE PROSPERITY CENTER

Type of Meeting: Board of Directors Meeting

Date/Time: November 16, 2018
9am to 11:00am

Location: South Shore
Tahoe Chamber/LTVA
https://zoom.us/j/654131552
Or Telephone
US: +1 646 876 9923
Meeting ID: 654 131 552

Time	Agenda Topic	Who
9am	Welcome	Walker
9:05	Announcement: • Board member application – Frank Gerdeman	Walker
	Consent Item: • Draft July and September Board Meeting minutes	Lind
	Discussion Items: • October 2018 Financials • 2019 Budget • End of Year Funding – Board Giving and Year-end • Economic Summit Debrief/Surveys • Proposed 2019 Board Calendar	Hogan Hogan Walker/Stern *Hill Drum* Walker
10:30	Board Member Announcements	All
10:45	Meeting Review and Staff Direction	Hill Drum
10:50	Closed Session (If necessary/reconvene to Open Session) or Adjourn	

Board of Directors Meeting
December 13, 2019, LTVA/Tahoe Chamber

Meeting started at 9:36 AM

Board members present: Frank Gerdeman, Lisa Granahan, Michelle Risdon, Brian Hogan, Roger Kahn, Rick Link, Joanne Marchetta, Jesse Walker, Bill Kelly, Roger Rempfer, Bob Grant
Board members on phone: Bill Roby, Robert Stern
Staff Present: Heidi Hill Drum, Chase Janvrin, Erin Jones, Shelby Cook

Rick Lind welcomed the board:

- We're the strongest we have ever been financially.
- This year we had a comprehensive management consultant, B, evaluate the CEO and board and we have received helpful feedback.
    - Will begin implementing the recommendations in the next few months.

Group introduced themselves to new Board Member Bill Kelly.

Action Item: **Bill Kelly Board membership**
Brian Hogan motions, Roger Kahn seconds, board unanimously approves.

Action Item: To approve board members leaving:
Andy Chapman, Cindy Gustafson, Jane Layton and Bob Mecay
Roger Rempfer moves, Bob Stern seconds, board unanimously approves.

Consent Agenda to approve new officers, board terms, financials and meeting minutes:
Roger Rempfer moves, Frank Gerdeman seconds, board unanimously approves.

Brain Hogan & Heidi Hill Drum lead 2020 Budget:

- *Bill Kelly moved, Jesse Walker seconds, board unanimously approved 2020 budget.*

Board and Committee Meeting Changes:
Shift from fourth Friday mornings, to **first Wednesday afternoons from 3-5 PM** at various businesses around the lake and then follow it with a happy hour.

Moving forward:

- Get agendas out to committees prior to meetings so they can gauge what their involvement needs to be/prepare.
- We should bring in not only community members, but people who can come in and present on their accomplishments in the fields that we're working on to make this a learning experience.
- TPC to be clearer about dates and times for committee meetings.
- Committee chairs and TPC to set meetings for when they make sense.

2020 board calendar: Joanne Marchetta moved, Roger Rempfer seconds, board unanimously approves.

Action Items:

- Make an updated organization chart ***(Heidi)***
- Keep reminding and getting on the board to engage for the Summit. ***(Roger Rempfer)***
- Send updated calendar invites for next year. ***(Shelby)***
- Send out an ask to the board about what committees they want to be on. ***(Shelby)***
- Consider a possible new committee: to discuss with workforce at their meeting and bring back to board next meeting. ***(Workforce and Executive Committees)***

Meeting ended at approximately 11:24 AM

Board Retreat - July 26, 2019
Edgewood Tahoe
Stateline, NV 89449

Board Members Present: Andy Chapman, Darcie Collins, Lew Feldman, Lisa Granahan, Roger Kahn, Jane Layton, Rick Lind, Joanne Marchetta, Jennifer Merchant, Devin Middlebrook, Sue Novasel, Roger Rempfer, Patrick Rhamey, Michelle Risdon, Bill Roby, Robert Stern, Jesse Walker and Frank Gerdeman.
Staff Present: Heidi Hill Drum, Erin Jones, Shelby Cook
Facilitator: Tawni Janvrin

Meeting began at 8:38am.

Chair Bill Roby welcomed the board:
"When it comes to people and individual's desire for the Lake Tahoe area, there is always one word: thrive. That is the purpose of our work here today - guiding this organization so that we can build a community that thrives."

Heidi led a high-level overview of what TPC has accomplished over the past five years. She also shared an overview of the 2018-2020 Strategic Plan, the 2019 Workplan and Q2 updates.

Specific Strategic Plan accomplishments at the halfway point of the three-year plan:
There are 28 objectives set by the board.

- 12 (43%) are completed.
- 5 of the 28 are halfway toward completion.
- 6 are ongoing.
- 3 are being led by others.
- 2 have yet to begin.

We're on track to complete most of the original Strategic Plan objectives by the end of 2020.

Heidi then introduced Tawni Janvrin, our facilitator for the day. She shared that she has excellent facilitation and corporate retreat experience and is helping with planning for the Tahoe Economic Summit.

<u>Evolutionary Stage of a Board of Directors</u> - this section was led by Bill Roby
How a board evolves affects how an organization evolves.
Growth/evolution usually happen due to a catalyst which pushes a board out of their comfort zone. There are four types of boards: Working, Governance, Strategic, and Visionary

- TPC tends to bounce around between each of these, the two most prominent being Working and Governance.

There are visionary aspects in each step of the board evolution; we can't be in a visionary stage yet as we're still reaching toward our original vision.

- The board at this point in development needs to be strategic and focused on accomplishing particular goals.

TAHOE PROSPERITY CENTER

tahoeprosperity.org

Board of Directors Meeting
December 13, 2019
9:30 AM - 11:30 AM

Tahoe Chamber/LTVA
169 US Highway 50

Conference Call-in Number:
~~1-605-475-6006~~
~~Access Code 6064452#~~

9:30 AM	1. Welcome/Call to Order
9:35 AM	2. New Board Member – Bill Kelly a. Introductions b. Approve appointment of Bill Kelly c. Approve resignation of Andy Chapman and Cindy Gustafson
9:45 AM	3. Consent Agenda a. Board Retreat Minutes b. Quarterly Financials c. 2020 Board Officers and Terms
9:50 AM	4. Discussion Items a. 2020 Budget b. 2020 Board Meeting schedule c. Workplan Update and ideas for 2020
11:00 AM	5. Meeting Review and Staff Direction
11:15 AM	6. Board Announcements
11:30 AM	7. Adjourn

TAHOE PROSPERITY CENTER
tahoeprosperity.org

TPC Board Retreat Agenda
July 26th, 2019
8:30 AM - 1:30 PM

Location: Edgewood – South Room – in original Country Club Building

*The purpose of this retreat is to **unify** and **inspire**. Our agenda has been strategically planned to ensure our retreat purpose is served.*

Time	Topic	Led By:
8:30 AM	Welcome	Heidi
8:35 AM	Retreat Purpose: to create consensus & inspire	
8:40 AM	Introductions: Tawni Janvrin, Faciliator & new Program Manager	
8:45 AM	Strategic Plan Accomplishment to Date	
9:10 AM	Strategic Plan Update	
9:30 AM	Role of the Board	Bill
9:35 AM	Working Board → Strategic Board Definition of a strategic board	
10:00 AM	Break	
10:15 AM	Small group breakout to answer the following Strategic Focus Area questions: a. What does success look like for <your strategic focus area>? b. What does TPC's effort in <your strategic focus area> better than anyone else? c. What are we going to accomplish in the next 18 – 24 months in <your strategic focus area>?	*Select a secretary & presenter within your group of leaders*
11:00 AM	Small Group Recap of questions answered	Tawni
11:30 AM	TPC's Story	Heidi
11:45	Did we achieve the purpose of today's meeting?	Tawni
12:00 PM	Call To Action: Be an Ambassador for the organization Fundraise	Bill
12:15 PM	Eat and Collaborate. Consent Agenda (Board packet)	All

TAHOE PROSPERITY CENTER

Type of Meeting: **Board of Directors Meeting**

Date/Time: **January 25, 2019**
9:30am to 1:00pm

Location: **South Shore**
Tahoe Chamber/LTVA
Zoom info:
Join from PC, Mac, or Android
[illegible]
US: +1 646 876 9923
Meeting ID: 654 131 552

Time	Agenda Topic	Who
9:30am	Welcome/Call to Order	Walker
9:35	Consent Agenda: a) Draft November Board Meeting minutes b) 2018 Financials c) Committee Reports Action Items: a) Approval of 2019 Officers b) Approval of New Board Terms c) Board member changes	Walker Roby

10:00	Discussion Items:
	• 2019 Cash Flow, Reserve and Endowment
	• Board Annual Self-Evaluation Survey
	• 2019 Draft TPC Workplan
	  ○ Tahoe Prosperity Center History
	  ○ 2018 Accomplishments
		Hogan/Roby
		Roby
		
		Tom Greene
		Hill Drum

10:45	Break	All

11:00	Discussion Items continued:
	• 2019 Draft TPC Workplan
	  ○ 2018-2020 Strategic Plan Review
	  ○ 2019 Workplan Goals for General Operating and Program Areas
	  ○ Board Role in accomplishing 2019 Workplan
		All

12:00	Meeting Review and Staff Direction	Hill Drum
12:15	Board Announcements	All
12:30	Lunch provided	
1:00	Closed Session (If necessary/reconvene to Open Session) or Adjourn	Roby

Award Abstract #0087344

An Interdisciplinary Collaboration on Performance Aspects of a High Performance Wireless Research and Education Network

NSF Org:	OAC Office of Advanced Cyberinfrastructure (OAC)
Initial Amendment Date:	August 11, 2000
Latest Amendment Date:	September 4, 2003
Award Number:	0087344
Award Instrument:	Continuing grant
Program Manager:	Kevin L. Thompson OAC Office of Advanced Cyberinfrastructure (OAC) CSE Direct For Computer & Info Scie & Enginr
Start Date:	August 15, 2000
End Date:	July 31, 2005 (Estimated)
Awarded Amount to Date:	$2,762,230.00
Investigator(s):	Hans-Werner Braun hwb@ucsd.edu (Principal Investigator) Frank Vernon (Co-Principal Investigator)
Sponsor:	University of California-San Diego Office of Contract & Grant Admin La Jolla, CA 92093-0621 (858)534-4896
NSF Program(s):	ADVANCED NET INFRA & RSCH, NETWORK INFRASTRUCTURE
Program Reference Code(s):	1087, 9217, 9251, HPCC
Program Element Code(s):	4090, 4091

ABSTRACT

An unresolved and underdeveloped area for the evolving Internet is the issue of ubiquity. Rural areas across the nation are affected by the lack of network access; solutions are either prohibitively expensive, or many years away from implementation. The research and education communities have immediate connection needs, for researchers working in remote areas (in the field, in observatories, and with autonomous telemetry sensors) and for remote educational facilities, at reasonable performance levels to

the Internet.

The goal of this project is to create a substantial and robust wireless backbone network for bidirectional traffic flows by expanding upon a prototype connection recently installed by the Measurement and Network Analysis Group of the National Laboratory for Applied Network Research (NLANR) and the San Diego Supercomputer Center (SDSC), the Scripps Institution of Oceanography (SIO), as well as the School of Engineering and its Center for Wireless Communications (CWC).

This proposal is a collaboration between network researchers and disciplinary researchers in geophysics, and other fields. Multiple different users with different impacts will help to define and understand requirements, as well as appropriate parameters for the implementation of a high performance wireless networking environment, with high performance extending beyond raw speed and including aspects of predictability, as well as spacial and temporal availability. The project is heavily leveraged with the existing network measurement and analysis activity of NLANR, as well as the seismic measurement and analysis activities at SIO.

The immediate impact of providing services to researchers and telemetry stations in the field and a delivery mechanism for distance education in disadvantaged areas (in San Diego County) is clear. This network will have the technological capability to accommodate a high volume of data (for both communications and telemetry), thus increasing the scope and area of many projects currently limited by these constraints. The wireless network's primary function as an applied test bed to address distance access issues over a

relatively large rural area in general, and to assess performance characteristics of such a network will result in long-term developments and advances in the area of Internet technology.

The impact of this Internet Technologies project will be substantial and wide-spread. Benefits to the research and education communities - and ultimately, the public - include improved functional capabilities (across a variety of disciplines), facilitated collaborations between institutions, better and more reliable network access, and a prototype which can be emulated throughout rural areas in the U.S.

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314, USA
Tel: (703) 292-5111, FIRS: (800) 877-8339 | TDD: (800) 281-8749

Award Abstract #9807479

National Laboratory for Applied Network Research (NLANR)

NSF Org:	CNS Division Of Computer and Network Systems
Initial Amendment Date:	April 15, 1998
Latest Amendment Date:	March 17, 2003
Award Number:	9807479
Award Instrument:	Cooperative Agreement
Program Manager:	Thomas J. Greene CNS Division Of Computer and Network Systems CSE Direct For Computer & Info Scie & Enginr
Start Date:	April 15, 1998
End Date:	July 31, 2002 (Estimated)
Awarded Amount to Date:	$3,159,352.00
Investigator(s):	Hans-Werner Braun hwb@ucsd.edu (Principal Investigator) Ronn Ritke (Co-Principal Investigator) Kimberly Claffy (Former Co-Principal Investigator)
Sponsor:	University of California-San Diego Office of Contract & Grant Admin La Jolla, CA 92093-0621 (858)534-4896
NSF Program(s):	ADVANCED NET INFRA & RSCH
Program Reference Code(s):	9217, 9251, HPCC
Program Element Code(s):	4090

ABSTRACT

The agreement provides for the National Laboratory for Applied Networking Research (NLANR)s Measurement and Operations Analysis Team (MOAT), led by Principal Investigator Hans-Werner Braun, to continue the NLANR research activities that have been ongoing at UCSD since 1995. In addition to measuring and analyzing vBNS traffic data, NLANR/MOAT will promote the continued development, testing and deployment of publicly-available measurement and analysis tools and techniques. NLANR/MOAT will facilitate the early identification and analisis of performance (both network-centric and applications-centric) trends and problems (related to the VBNS and interconnected High Performance networks and institutions). This will be accomplished by deploying flow monitors and conducting performance measurements on HPC connections to the vBNS, on select vBNS partner nodes, and at other key sites (particularly vBNS aggregation points, such as GigaPOPs and NGIXen). Resulting data and analysis on Internet traffic performance and traffic flows will then be made available to the research community and the general public.

BOOKS/ONE TIME PROCEEDING

n/a. "Proceedings of the 'Measurement and Analysis Collaborationsö Workshop. 29-30 June 1999", 01/01/1999-12 /01/1999, , Mike Gannis and Todd Hansen. 1999, "overview of workshop topics: all slides used by speakers".

n/a. "Proceedings of the 'Challenges and Opportunities for Measurement and Analysis in a High Performance Computing Environment' Workshop. 1 July 1999", 01/01/1999-12/01/1999, , Mike Gannis and Todd Hansen 1999, "overview of workshop topics: all slides used by speakers".

--. "Proceedings of the Measurement and Analysis Collaborations Workshop. 29-30 June 1999", 01/01/2000-01/01/2001, , Mike Gannis and Todd Hansen 1999, "available from http://moat.nlanr.net/Workshops/".

--. "Proceedings of the Challenges and Opportunities for Measurement and Analysis in a High Performance Computing Environment Workshop. 1 July 1999", 01/01/2000-01/01/2001, , Mike Gannis and Todd Hansen 1999, "available from http://moat.nlanr.net/Workshops/".

--. "Proceedings of the Measurement and Analysis Collaborations Workshop. 29-30 June 1999", 01/01/2001-01/01/2002, , Mike Gannis and Todd Hansen 1999, "available from http://moat.nlanr.net/Workshops/".

--. "Proceedings of the Challenges and Opportunities for Measurement and Analysis in a High Performance Computing Environment Workshop. 1 July 1999", 01/01/2001-01/01/2002, , Mike Gannis and Todd Hansen 1999, "available from http://moat.nlanr.net/Workshops/".

--. "Proceedings of the Measurement and Analysis Collaborations Workshop. 29-30 June 1999", 04/15/1998-07/31/2002, , Mike Gannis and Todd Hansen 1999, "available from http://moat.nlanr.net/Workshops/".

--. "Proceedings of the Challenges and Opportunities for Measurement and Analysis in a High Performance Computing Environment Workshop. 1 July 1999", 04/15/1998-07/31/2002, , Mike Gannis and Todd Hansen 1999, "available from http://moat.nlanr.net/Workshops/".

Award Abstract #9796124

Proposal for the Creation of a Distributed National Labortory for Applied Network Research (NLANR

NSF Org:	CNS Division Of Computer and Network Systems
Initial Amendment Date:	February 21, 1997
Latest Amendment Date:	November 7, 1997
Award Number:	9796124
Award Instrument:	Cooperative Agreement
Program Manager:	William Decker CNS Division Of Computer and Network Systems CSE Direct For Computer & Info Scie & Enginr
Start Date:	July 1, 1996
End Date:	September 30, 1998 (Estimated)
Awarded Amount to Date:	$1,231,889.00
Investigator(s):	Hans-Werner Braun hwb@ucsd.edu (Principal Investigator)
Sponsor:	University of California-San Diego Office of Contract & Grant Admin La Jolla, CA 92093-0621 (858)534-4896
NSF Program(s):	ADVANCED NET INFRA & RSCH
Program Reference Code(s):	9217, HPCC
Program Element Code(s):	4090

ABSTRACT

Not Available

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314, USA
Tel: (703) 292-5111, FIRS: (800) 877-8339 | TDD: (800) 281-8749

Text Only Version

Award Abstract #0426879

ITR: Integration and Analysis of Reliable Networking for Remote Science, Education, and First Responders

NSF Org:	OAC Office of Advanced Cyberinfrastructure (OAC)
Initial Amendment Date:	September 3, 2004
Latest Amendment Date:	April 22, 2008
Award Number:	0426879
Award Instrument:	Continuing grant
Program Manager:	Kevin L. Thompson OAC Office of Advanced Cyberinfrastructure (OAC) CSE Direct For Computer & Info Scie & Enginr
Start Date:	October 1, 2004
End Date:	March 31, 2010 (Estimated)
Awarded Amount to Date:	$2,995,451.00
Investigator(s):	Hans-Werner Braun hwb@ucsd.edu (Principal Investigator) Frank Vernon (Co-Principal Investigator)
Sponsor:	University of California-San Diego Office of Contract & Grant Admin La Jolla, CA 92093-0621 (858)534-4896
NSF Program(s):	ITR FOR NATIONAL PRIORITIES, SCI TESTBEDS
Program Reference Code(s):	0000, 1206, 1652, 1661, 4444, 7314, 9217, HPCC, OTHR
Program Element Code(s):	7314, 7368

ABSTRACT

This proposal was submitted to NSF in response to the ITR solicitation NSF 04-012. This proposal is follow-on to an existing award: 0087344. This project will conduct systemic interdisciplinary and multi-institutional research regarding the quality of service achievable by a highly functional wireless cyberinfrastructure environment. While doing so, it addresses several diverse scientific networking predictability needs for rural and remote areas.

BOOKS/ONE TIME PROCEEDING

Bruch, K. M., Braun, H-W., Teel, S.. "Live Interactive Virtual Explorations via the High Performance Wireless Research and Education Network.", 10/01/2009-09/30/2010, , In S. Mukerji (Ed.)"*Cases on Technological Adaptability and Transnational*

Learning: Issues and Challenges", 2010, "Pennsylvania: IGI Global. (textbook chapter, published in 2010)".

Bruch, K. M., Braun, H-W., Teel, S.. "Live Interactive Virtual Explorations via the High Performance Wireless Research and Education Network.", 10/01/2010-09/30/2011, , In S. Mukerji (Ed.)"*Cases on Technological Adaptability and Transnational Learning: Issues and Challenges*", 2010, "Pennsylvania: IGI Global. (textbook chapter, published in 2010)".

Please report errors in award information by writing to: awardsearch@nsf.gov.

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314, USA
Tel: (703) 292-5111, FIRS: (800) 877-8339 | TDD: (800) 281-8749


Text Only Version

F

State of California
Secretary of State

Statement of Information
(Foreign Corporation)
FEES (Filing and Disclosure): $25.00.
If this is an amendment, see instructions.
IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

GB80501

FILED

In the office of the Secretary of State of the State of California

JAN-02 2020

1. **CORPORATE NAME**
TAHOE PROSPERITY CENTER

2. **CALIFORNIA CORPORATE NUMBER** C3408850

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. **If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.**
☐ If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed **to Item 13**.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

	CITY	STATE	ZIP CODE
4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE 948 INCLINE WAY, INCLINE VILLAGE, NV 89451			
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY			
6. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 4			

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

	ADDRESS	CITY	STATE	ZIP CODE
7. CHIEF EXECUTIVE OFFICER/ HEIDI HILL DRUM	942 KEKIN ST, SOUTH LAKE TAHOE, CA 96150			
8. SECRETARY DARCIE GOODMAN COLLINS	2608 LAKE TAHOE BLVD., SOUTH LAKE TAHOE, CA 96150			
9. CHIEF FINANCIAL OFFICER/ BRIAN HOGAN	P.O. BOX 5700, STATELINE, NV 89449			

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 11 must be left blank.

10. NAME OF AGENT FOR SERVICE OF PROCESS [Note: The person designated as the corporation's agent MUST have agreed to act in that capacity prior to the designation.]
HEIDI HILL DRUM

11. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, **IF AN INDIVIDUAL** CITY STATE ZIP CODE
942 KEKIN ST., SOUTH LAKE TAHOE, CA 96150

Type of Business

12. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION
ECONOMIC DEVELOPMENT NONPROFIT

13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

01/02/2020	HEIDI HILL DRUM	CEO	
DATE	TYPE/PRINT NAME OF PERSON COMPLETING FORM	TITLE	SIGNATURE

Visionary

Investment of $20,000 +

MORGAN FAMILY FOUNDATION

EL DORADO COUNTY CALIFORNIA

Placer

Violation:
SLTCC 1.20.030

El Dorado Community Foundation

Bank of America

1.20.030 Use of city seal and logo.

A. The city seal and logo are the property of the city of South Lake Tahoe.

B. The city clerk is the official custodian of the city seal and will affix the city seal to all certificates and documents as may be required by law, by this code, or by ordinance of the city.

C. All other uses of the city seal are restricted to official city business and such other appropriate uses that promote the interests of the city as may be authorized in writing by the city clerk.

D. The city manager or designee is the official custodian of the city logo.

E. Use of the city logo is restricted to official city business to identify city programs, initiatives, partnerships and sponsorships and such other appropriate uses that promote the interests of the city as may be authorized in writing by the city manager.

F. No person may make or use the city seal or logo or any cut, facsimile, or reproduction of the city seal or logo, or make or use any seal or logo or any design which is an imitation, in the design of, or which may be mistaken for the city seal or logo or the design of the city seal or logo, while acting within the scope of their office or employment.

G. City officers, city employees, members of the city council, and members of the city boards and commissions may use stationery and printed materials with the city seal or logo, or facsimile of the city seal or logo, while acting within the scope of their office or employment.

H. No person, including any elected officer of the city, may use the city seal or logo, or facsimile of the city seal or logo, in any correspondence or other printed materials distributed in favor of or against any candidate for public office.

I. Additional City Seals. The South Lake Tahoe city council retains the right to create variations of the city seal or logo and to adopt and establish other official seals or logos. Such variations may include, but are not limited to, centennial seals or logos, or other seals or logos which mark anniversaries, events, and/or any other city occasion the city council wishes to commemorate. (Ord. 1133 § 1)

SCHEDULE C
Income, Loans, & Business Positions
(Other than Gifts and Travel Payments)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name
Devin Middlebrook

► 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME
Washoe Tribe of Nevada and California

ADDRESS *(Business Address Acceptable)*
919 US HWY 395 N Gardnerville, NV89410

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION
Tribal Administrator

GROSS INCOME RECEIVED
- ☐ No Income - Business Position Only
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☒ $10,001 - $100,000
- ☐ OVER $100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED
- ☒ Salary
- ☐ Spouse's or registered domestic partner's income (For self-employed use Schedule A-2.)
- ☐ Partnership (Less than 10% ownership. For 10% or greater use Schedule A-2.)
- ☐ Sale of _____ *(Real property, car, boat, etc.)*
- ☐ Loan repayment
- ☐ Commission or
- ☐ Rental Income, *list each source of $10,000 or more*

_____ *(Describe)*

- ☐ Other _____ *(Describe)*

► 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME

ADDRESS *(Business Address Acceptable)*

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

GROSS INCOME RECEIVED
- ☐ No Income - Business Position Only
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☐ OVER $100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED
- ☐ Salary
- ☐ Spouse's or registered domestic partner's income (For self-employed use Schedule A-2.)
- ☐ Partnership (Less than 10% ownership. For 10% or greater use Schedule A-2.)
- ☐ Sale of _____ *(Real property, car, boat, etc.)*
- ☐ Loan repayment
- ☐ Commission or
- ☐ Rental Income, *list each source of $10,000 or more*

_____ *(Describe)*

- ☐ Other _____ *(Describe)*

► 2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD

* You are not required to report loans from a commercial lending institution, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS *(Business Address Acceptable)*

BUSINESS ACTIVITY, IF ANY, OF LENDER

HIGHEST BALANCE DURING REPORTING PERIOD
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☐ OVER $100,000

INTEREST RATE
_____% ☐ None

TERM (Months/Years)
_____

SECURITY FOR LOAN
- ☐ None
- ☐ Personal residence
- ☐ Real Property _____ *Street address*

_____ *City*

- ☐ Guarantor _____
- ☐ Other _____ *(Describe)*

Comments: _____

FCC Form 620

Notification Date: **7AM EST 09/21/2018**
File Number: **0008374797**

FCC Wireless Telecommunications Bureau
New Tower (NT) Submission Packet

Approved by OMB
3060 – 1039
See instructions for
public burden estimates

General Information

1) (Select only one) **(NE)** **NE** – New **UA** – Update of Application **WD** – Withdrawal of Application	
2) If this application is for an Update or Withdrawal, enter the file number of the pending application currently on file.	File Number:

Applicant Information

3) FCC Registration Number (FRN): **0012845343**
4) Name: **Verizon Wireless**

Contact Name

5) First Name: **Robin**	6) MI:	7) Last Name: **Haeffner**	8) Suffix:
9) Title: **VZW HQ - NEPA Regulatory Compliance**			

Contact Information

10) P.O. Box:	**And /Or**	11) Street Address: **1301 Solana Boulevard Building 2, Suite 2500**		
12) City: **Westlake**			13) State: **TX**	14) Zip Code: **76262**
15) Telephone Number: **(501)529-5377**		16) Fax Number:		
17) E-mail Address: **npa@verizonwireless.com**				

Consultant Information

18) FCC Registration Number (FRN): **0016385759**
19) Name: **EnviroBusiness, Inc. d/b/a EBI Consulting (EBI 6118004920)**

Principal Investigator

20) First Name: **Cory**	21) MI:	22) Last Name: **Johnson**	23) Suffix:
24) Title: **Architectural Historian**			

Principal Investigator Contact Information

25) P.O. Box:	**And /Or**	26) Street Address: **6876 Susquehanna Trail South**		
27) City: **York**			28) State: **PA**	29) Zip Code: **17403**
30) Telephone Number: **(717)428-0401**		31) Fax Number:		
32) E-mail Address: **mbandstra@ebiconsulting.com**				

Other Consulting Parties

Other Consulting Parties Contacted

1) Has any other agency been contacted and invited to become a consulting party?	(**X**) Yes ( ) No

Consulting Party

2) FCC Registration Number (FRN):
3) Name: **Washoe Tribe of Nevada and California**

Contact Name

4) First Name: **Darrel**	5) MI:	6) Last Name: **Cruz**	7) Suffix:
8) Title:			

Contact Information

9) P.O. Box:	**And /Or**	10) Street Address: **919 Highway 395 South**		
11) City: **Gardnerville**			12) State: **NV**	13) Zip Code: **89410**
14) Telephone Number: **(775)265-8600**		15) Fax Number:		
16) E-mail Address: **Darrel.cruz@washoetribe.us**				
17) Preferred means of communication: (**X**) E-mail ( ) Letter ( ) Both				

Dates & Response

18) Date Contacted **09/06/2018** 19) Date Replied _____

(**X**) No Reply

( ) Replied/No Interest

( ) Replied/Have Interest

( ) Replied/Other

Additional Information

20) Information on other consulting parties' role or interest (optional):

Early Archaic (5000-2000 B.C.) sites are characterized by projectile points, atlatls and darts, knives, bone awls and ornaments. Lack of grinding tools suggests that the inhabitants were not exploiting the plant foods to the extent that later cultures were. They were nomadic hunters, following the game throughout the seasons. Archaeological sites representing this early period are scarce.

Middle Archaic (about 2000 B.C. to 500 A.D.) represents a long period of time characterized by the utilization of a wide variety of resources. They relied primarily on large game and rabbits, but grinding stones are common at sites. Trade in marine shells and obsidian became important.

Late Archaic (A.D. 500 to Historic Contact) saw a more semi-sedentary settlement pattern. Smaller projectile points suggest the introduction of the bow and arrow and less or no reliance on the spear thrower. Plant processing tools became more abundant, indicating increased dependence on plants and small game, rather than large game.

Washoe

Historically, the Lake Tahoe area was part of the territory occupied by the Washoe Native American group, who are members of the Hokan linguistic group, and are classified as Great Basin Indians. The name "washoe" is derived from the autonym *waashiw*, meaning "people from here" in the Washoe language. The Wahoe occupied land throughout California and Nevada, including the Sierra Nevada Mountain range. They were the first known Lake Tahoe region inhabitants. Their settlement pattern included permanent locations on higher ground, near rivers and springs, while temporary camps were utilized anywhere in valleys or mountains, close to food sources (D'Azevedo 1986).

The Washoe utilized seasonal resources available in the region. The area of Lake Tahoe and surrounding rivers and streams were important resources for fishing during the spring and fall, with the higher elevations of the Sierra Nevada utilized for hunting game during the summer. During the winter months stored foods including dried meat and fish and nuts were utilized. Important food resources would have been cattail seeds and shoots, and pinon nuts, as well as a variety of berries, seeds, and roots. Protein would have been provided by hunting game, small mammals, birds, and fishing (Washoe Tribe of Nevada and California 2009).

Establishment of APE and Cultural Resources Within

On August 17, 2018, HELIX Professional Archaeologist Carrie D. Wills, M.A., RPA, visited the candidate location for the purpose of establishing the APE (see Exhibit 1 and Exhibit 2). Ms. Wills satisfies the Secretary of the Interior's qualifications for a field archaeologist (see Resume). The APE was ascertained by examining the planned candidate construction methods, the existing topography, and the current level of urbanization. Verizon Wireless proposes the construction of a new unmanned tower telecommunications facility at this location. Proposed is the installation of antennas and associated equipment on a new 112'-high monopine within a 30' by 30' lease area. A proposed 5' wide joint utility easement will extend approximately 165' southeast, southwest, and northwest from an existing utility pole to the lease area. Access will be provided with a proposed 12'-wide access road that will extend southeast from the proposed lease area for approximately 15' to Needle Peak Road. Approximately 13 trees will be removed to accomidate the APE-DE. The APE-DE totals approximately 0.04 acres.. The visual indirect APE is considered all that area within a ½-mile radius of those portions of the candidate once completed.

Direct APE Cultural Resources

The results of the site investigation confirm no prehistoric cultural resources will be affected by installation of the new monopine telecommunications facility. The candidate location is a pine tree grove within the grounds of Hansen's Snow Tube and Saucer Hill Resort. A pedestrian survey of all areas of proposed ground disturbance did

jmann@easternshoshone.org; falene.russette@iresponse106.com - 307-438-0094
Details: The Eastern Shoshone Tribe has established a new online procedure for FCC TCNS review/consultation. Online submissions can now be completed at http://app.tribal106.com. The data platform is currently being administered by a third party who are providing consultation servicing through the online system on behalf of the Eastern Shoshone Tribe. For questions, please call Shastelle Swan at 406-395-4700

Based on the location of the proposed project and the pole(s) that you will be constructing as part of the Section 106 process in our particular aboriginal homelands, we are REQUESTING TO BE CONSULTED on this proposed project.

Please utilize the Tribal 106 NHPA consultation processing system website. Online submissions can be completed at http://app.tribal106.com

The Eastern Shoshone Tribe through the Historic Preservation Department has established a fee of $500.00 per consultation. We are only accepting checks at this time. All checks should be mailed to the following address:

I-Response LLC - EST
PO Box 87
Box Elder, MT 59521

If you have questions, please feel free to contact either Mr. Josh Mann, THPO, at jmann@easternshoshone.org or Shastelle Swan, AR Clerk, at shastelle.swan@iresponse106.com.

Sincerely,
Josh Mann, THPO
Eastern Shoshone Tribe

2. THPO Darrel Cruz - Washoe Tribe of Nevada & California - 919 Highway 395 South Gardnerville, NV - darrel.cruz@washoetribe.us - 775-546-3421

If the applicant/tower builder receives no response from the Washoe Tribe of Nevada & California within 30 days after notification through TCNS, the Washoe Tribe of Nevada & California has no interest in participating in pre-construction review for the proposed site. The Applicant/tower builder,
however, must immediately notify the Washoe Tribe of Nevada & California in the event archaeological properties or human remains are discovered during construction, consistent with Section IX of the Nationwide Programmatic Agreement and applicable law.

3. Attorney Montana & Associates LLC - Skull Valley Band of Goshute Indians - N12923 N Prairie Rd Osseo, WI - skullvalleybandofgoshutefcctcns@outlook.com - 605-881-1227

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

COVER PAGE

CALIFORNIA FORM **460**

Page 1 of 8

For Official Use Only

Date Stamp

RECEIVED

FEB 4 2022

City of South Lake Tahoe
Office of the City Clerk

Statement covers period
from 07/01/2021
through 12/31/2021

Date of election if applicable: (Month, Day, Year)

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☒ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☐ Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- ☐ Preelection Statement
- ☒ Semi-annual Statement
- ☐ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1367096

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Tahoe Chamber Independent Expenditure Committee

STREET ADDRESS (NO P.O. BOX)
3066 Lake Tahoe Boulevard

CITY	STATE	ZIP CODE	AREA CODE/PHONE
South Lake Tahoe	CA	96150	(530)541-7797

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX
455 Capitol Mall, Suite 600

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Sacramento	CA	95814	

OPTIONAL: FAX / E-MAIL ADDRESS
fppc@bmhlaw.com

Treasurer(s)

NAME OF TREASURER
Brian T. Hildreth

MAILING ADDRESS
455 Capitol Mall, Suite 600

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Sacramento	CA	95814	(916)442-7757

NAME OF ASSISTANT TREASURER, IF ANY
Peter Leoni

MAILING ADDRESS
455 Capitol Mall, Suite 600

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Sacramento	CA	95814	(916)442-7757

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 01/18/2022 (Date) By [redacted] (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Recipient Committee Campaign Statement Cover Page — Part 2

5. Officeholder or Candidate Controlled Committee

NAME OF OFFICEHOLDER OR CANDIDATE

OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)

RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP

Related Committees Not Included in this Statement: ***List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.***

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

6. Primarily Formed Ballot Measure Committee

NAME OF BALLOT MEASURE

BALLOT NO. OR LETTER	JURISDICTION	☐ SUPPORT ☐ OPPOSE

Identify the controlling officeholder, candidate, or state measure proponent, if any.

NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY

7. Primarily Formed Candidate/Officeholder Committee *List names of officeholder(s) or candidate(s) for which this committee is primarily formed.*

NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE

Attach continuation sheets if necessary

Campaign Disclosure Statement
Summary Page

Amounts may be rounded to whole dollars.

SUMMARY PAGE

Statement covers period
from 07/01/2021
through 12/31/2021

CALIFORNIA FORM **460**

Page 3 of 8

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Tahoe Chamber Independent Expenditure Committee

I.D. NUMBER

1367096

Contributions Received

		Column A (TOTAL THIS PERIOD FROM ATTACHED SCHEDULES)	Column B (CALENDAR YEAR TOTAL TO DATE)
1. Monetary Contributions	*Schedule A, Line 3*	$ 0.00	$ 0.00
2. Loans Received	*Schedule B, Line 3*	0.00	0.00
3. SUBTOTAL CASH CONTRIBUTIONS	*Add Lines 1 + 2*	$ 0.00	$ 0.00
4. Nonmonetary Contributions	*Schedule C, Line 3*	0.00	48.20
5. TOTAL CONTRIBUTIONS RECEIVED	*Add Lines 3 + 4*	$ 0.00	$ 48.20

Expenditures Made

6. Payments Made	*Schedule E, Line 4*	$ 0.00	$ 50.00
7. Loans Made	*Schedule H, Line 3*	0.00	0.00
8. SUBTOTAL CASH PAYMENTS	*Add Lines 6 + 7*	$ 0.00	$ 50.00
9. Accrued Expenses (Unpaid Bills)	*Schedule F, Line 3*	1,475.63	2,848.54
10. Nonmonetary Adjustment	*Schedule C, Line 3*	0.00	48.20
11. TOTAL EXPENDITURES MADE	*Add Lines 8 + 9 + 10*	$ 1,475.63	$ 2,946.74

Current Cash Statement

12. Beginning Cash Balance	*Previous Summary Page, Line 16*	$ 1,110.42
13. Cash Receipts	*Column A, Line 3 above*	0.00
14. Miscellaneous Increases to Cash	*Schedule I, Line 4*	0.00
15. Cash Payments	*Column A, Line 8 above*	0.00
16. **ENDING CASH BALANCE**	*Add Lines 12 + 13 + 14, then subtract Line 15*	$ 1,110.42

If this is a termination statement, Line 16 must be zero.

17. LOAN GUARANTEES RECEIVED	*Schedule B, Part 2*	$ 0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	*See instructions on reverse*	$ 0.00
19. Outstanding Debts	*Add Line 2 + Line 9 in Column B above*	$ 2,848.54

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
/ /	$
/ /	$

*Amounts in this section may be different from amounts reported in Column B.

Schedule F
Accrued Expenses (Unpaid Bills)

Amounts may be rounded to whole dollars.

Statement covers period
from 07/01/2021
through 12/31/2021

CALIFORNIA FORM **460**

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Tahoe Chamber Independent Expenditure Committee

I.D. NUMBER

1367096

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF CREDITOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE OR DESCRIPTION OF PAYMENT	(a) OUTSTANDING BALANCE BEGINNING OF THIS PERIOD	(b) AMOUNT INCURRED THIS PERIOD	(c) AMOUNT PAID THIS PERIOD (ALSO REPORT ON E)	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	0.50	0.00	0.00	0.50
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	275.92	0.00	0.00	275.92
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	78.10	0.00	0.00	78.10
* Payments that are contributions or independent expenditures must also be summarized on Schedule D.	SUBTOTALS $	354.52$	0.00$	0.00$	354.52

Schedule F Summary

1. Total accrued expenses incurred this period. (Include all Schedule F, Column (b) subtotals for accrued expenses of $100 or more, plus total unitemized accrued expenses under $100.) ..... **INCURRED TOTALS $** 1,475.63
2. Total accrued expenses paid this period. (Include all Schedule F, Column (c) subtotals for payments on accrued expenses of $100 or more, plus total unitemized payments on accrued expenses under $100.) ..... **PAID TOTALS $** 0.00
3. Net change this period. (**Subtract** Line 2 from Line 1. Enter the difference here and on the Summary Page, Column A, Line 9.) ..... **NET $** 1,475.63
   May be a negative number

Schedule F
(Continuation Sheet)
Accrued Expenses (Unpaid Bills)

Amounts may be rounded to whole dollars.

Statement covers period
from 07/01/2021
through 12/31/2021

CALIFORNIA FORM 460

NAME OF FILER
Tahoe Chamber Independent Expenditure Committee

I.D. NUMBER
1367096

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*** Payments that are contributions or independent expenditures must also be summarized on Schedule D.**

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J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	75.70	0.00	0.00	75.70
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	78.45	0.00	0.00	78.45
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	76.10	0.00	0.00	76.10
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	60.00	0.00	0.00	60.00
	SUBTOTALS $	290.25 $	0.00 $	0.00 $	290.25

Schedule F (Continuation Sheet) Accrued Expenses (Unpaid Bills)

Amounts may be rounded to whole dollars.

Statement covers period
from 07/01/2021
through 12/31/2021

CALIFORNIA FORM 460

NAME OF FILER
Tahoe Chamber Independent Expenditure Committee

I.D. NUMBER
1367096

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FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
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J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	324.52	0.00	0.00	324.52
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	125.30	0.00	0.00	125.30
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	78.40	0.00	0.00	78.40
J. Richard Eichman, CPA 1127-11th Street Suite 300 Sacramento, CA 95814	PRO	113.40	0.00	0.00	113.40
	SUBTOTALS $	641.62 $	0.00 $	0.00 $	641.62

Schedule F (Continuation Sheet) Accrued Expenses (Unpaid Bills)

Amounts may be rounded to whole dollars.

Statement covers period
from 07/01/2021
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CALIFORNIA FORM 460

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Bell, McAndrews & Hiltachk 455 Capitol Mall, Suite 600 Sacramento, CA 95814	PRO	86.52	0.00	0.00	86.52
Bell, McAndrews & Hiltachk 455 Capitol Mall, Suite 600 Sacramento, CA 95814	PRO	0.00	86.52	0.00	86.52
Bell, McAndrews & Hiltachk 455 Capitol Mall, Suite 600 Sacramento, CA 95814	PRO	0.00	331.83	0.00	331.83
Bell, McAndrews & Hiltachk 455 Capitol Mall, Suite 600 Sacramento, CA 95814	PRO	0.00	200.76	0.00	200.76
	SUBTOTALS $	86.52 $	619.11 $	0.00 $	705.63

Schedule F
(Continuation Sheet)
Accrued Expenses (Unpaid Bills)

Amounts may be rounded to whole dollars.

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from 07/01/2021
through 12/31/2021

CALIFORNIA FORM 460

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Bell, McAndrews & Hiltachk 455 Capitol Mall, Suite 600 Sacramento, CA 95814	PRO	0.00	187.50	0.00	187.50
Bell, McAndrews & Hiltachk 455 Capitol Mall, Suite 600 Sacramento, CA 95814	PRO	0.00	200.76	0.00	200.76
Bell, McAndrews & Hiltachk 455 Capitol Mall, Suite 600 Sacramento, CA 95814	PRO	0.00	127.50	0.00	127.50
Bell, McAndrews & Hiltachk 455 Capitol Mall, Suite 600 Sacramento, CA 95814	PRO	0.00	340.76	0.00	340.76
	SUBTOTALS $	0.00 $	856.52 $	0.00 $	856.52

Bridget Cornell

From: Katherine Hangeland
Sent: Monday, May 2, 2022 10:46 AM
To: Georgina Balkwell
Cc: Bridget Cornell; Marja Ambler
Subject: RE: Hearings Officer/GB Meeting: Verizon/Tahoe Seasons New Telecommunications Facility; 3901 Saddle Road, City of South Lake Tahoe, El Dorado County, California; Assessor's Parcel Number 028-231-001, TRPA File Number ERSP2021-0808

FYI

From: Paul Weitz <paul.weitz@barmail.ch>
Sent: Sunday, May 1, 2022 5:40 PM
To: Joanne Marchetta <jMarchetta@trpa.gov>; John Marshall <jmarshall@trpa.gov>; Marja Ambler <mambler@trpa.gov>; Katherine Hangeland <khangeland@trpa.gov>
Cc: Bridget Cornell <bcornell@trpa.gov>
Subject: Hearings Officer/GB Meeting: Verizon/Tahoe Seasons New Telecommunications Facility; 3901 Saddle Road, City of South Lake Tahoe, El Dorado County, California; Assessor's Parcel Number 028-231-001, TRPA File Number ERSP2021-0808

Dear TRPA,

Don't listen to **Christi Creegan**'s business crony Jamie Orr. She is a greedy "mad woman" with little interest or capacity to comprehend the societal implications of her unethical human experimentation with cell towers. She is trying to discredit the overwhelming science that has one of the most prestigious environmental groups in the world taking down the FCC. Even professors from her *alma mater* would agree with the concern.

Jamie cut her teeth selling-out her PhD expertise to wealthy executives and start-ups who were trying to push through anti-science policy in order to cut existing or prevent new regulations that hinder corporate profits. When anyone calls her out on this bullshit, she flips the tables and wraps herself in her PhD that NO university would take seriously:

Dr. No

Fleming's Dr. No. was actually competent. Perhaps "Dr. No-No!" is more appropriate in this greedy and senseless radiation farce:

Our unscrupulous businesses executives, the **casinos** and **hotels**, are now having her do the same abuse on their behalf. This City and its residents should not listen to her anymore. She has lost her integrity as a science expert and is completely flying-by-the-seat-of-her-pants as an economic expert. She has never taken so much as one upper-division undergraduate course in economics! According to mandatory **public records** on file with the Nevada Secretary of State (Entity Number: E8921322020-6), she does not even live within our city limits:

OFFICER INFORMATION			▪ VIEW HISTORICAL DATA	
Title	Name	Address	Last Updated	Status
[redacted]				

NRS 78.035, 78.090, 78.150, 239.010; 15 U.S.C. §§ 77f(d) & 77aa(4)-(6); 17 CFR Part 210 (Securities Act of 1933)

Orr:

https://recorderclerkservice.edcgov.us/elweb/document/DOCCGD-2018-0013012-00

Wilson:

https://recorderclerkservice.edcgov.us/elweb/document/DOCCGD-2012-0056314-00

This unequivocally means that she and her neighbor Christina Wilson are not allowed to run for any South Lake Tahoe elective office (Elections Code § 201). It follows to reason that they should not be a proxy for those very offices either, and sure as hell should not be reigning over and oppressing legitimate city residents—as **a foreign influence**.

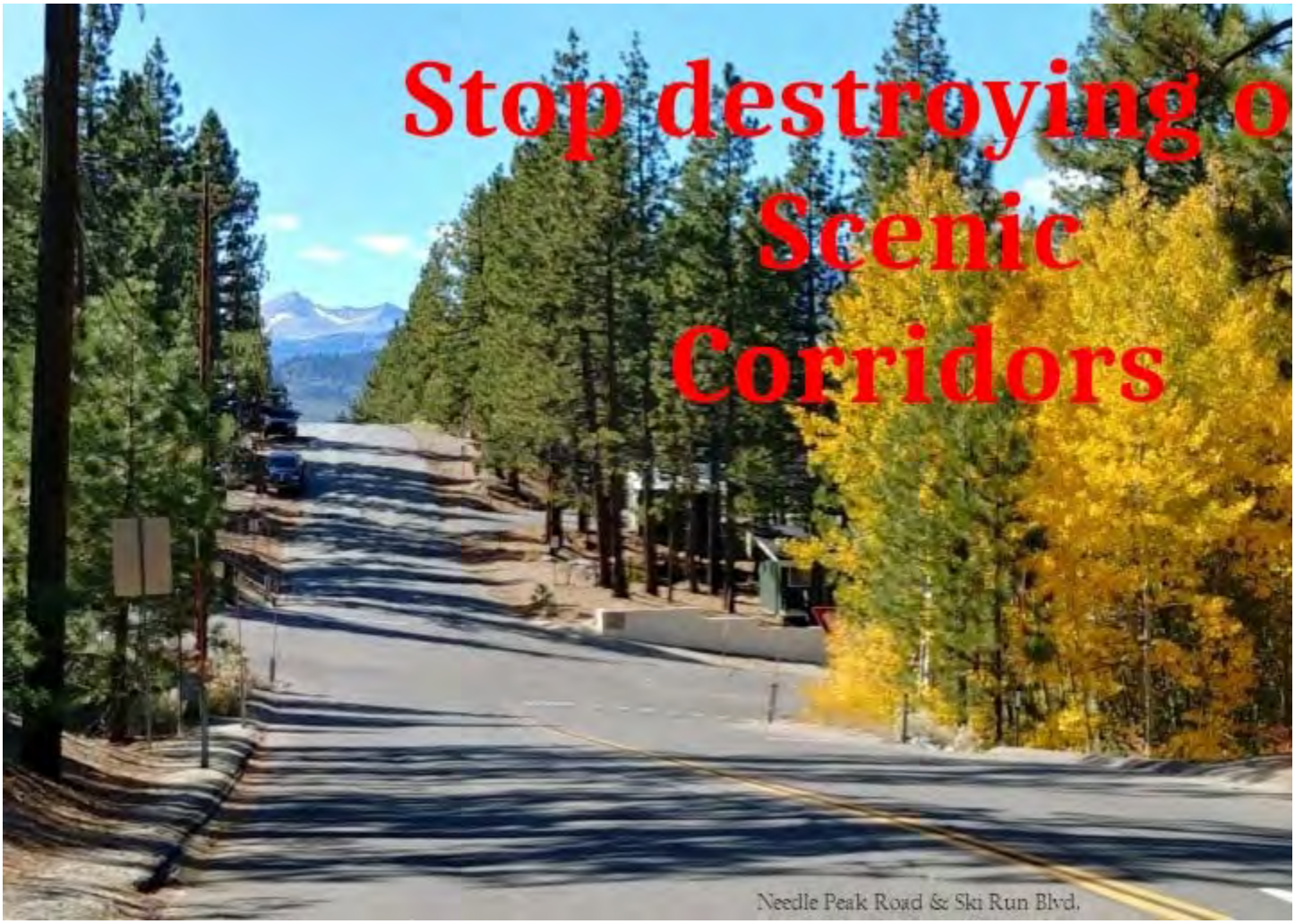
Paul Weitz

Bridget Cornell

From: Granville Fortescue <granville.fortescue@pressmail.ch>
Sent: Saturday, May 7, 2022 8:50 PM
To: PublicComment
Subject: 05 12 2022 Planning Commission Meeting {ITEM #General}
Attachments: SHC § 262.1.pdf; SHC § 263.1.pdf; SHC § 263.4.pdf; Scenic_Res_82_Roadways_El Dorado.pdf; Scenic_Res_82_Shoreline_El Dorado Beach.pdf; Scenic_Recreation_Areas_36-37.pdf; Scenic Maps.pdf; SCENIC-CORRIDORS.pdf; Visual Impact on Scenic Resources.pdf; Environmental Zone.pdf; Constructing a 112-foot cell tower in a residential area is no minor project.pdf; EO-13057.pdf; PRC § 21084.pdf; SouthLakeTahoe City Code -- 6.10.190 -- Scenic highway corridors.pdf; SouthLakeTahoe City Code -- Chapter 6 -- Trees.pdf; SouthLakeTahoe City Code -- Chapter 6 -- National Treasure.pdf

Dear City of South Lake Tahoe Planning Commission, Manager, and all other interested parties;

Please don't allow anymore thoughtless development of our Scenic Corridors!



The success of prior preservation efforts to set aside these lands and scenic corridors from development is precisely the reason we are even able to have this discussion! This land has been saved on purpose and it is not yours to ruin! A line has been drawn in the sand; if we keep moving it, then we have decided to be on a *bona fide* slippery slope to the very nightmare a prior generation hoped to prevent. There is no good reason to put an ugly, noisy, bright indoor recreation center on the precious rim of Lake Tahoe, just as there is no good reason to spoil the scenic return drive from *Heavenly Valley Ski Resort Scenic Recreation Area* with a hideous 12-story Macro Cell Tower, a cyclone fence, and an industrial shack. This is America's **outdoor playground**. Don't ruin it. **DON'T DO IT!**

Thanks for considering,

Granville R. Fortescue

State of California

STREETS AND HIGHWAYS CODE

Section 262.1

262.1. A local agency, as defined in subdivision (c) of Section 65402 of the Government Code, shall coordinate its planning with, and obtain the approval from, the appropriate local planning agency on the location and construction of any new district facility that would be within the scenic corridor of any state scenic highway.

(Added by Stats. 1971, Ch. 1531.)

State of California

STREETS AND HIGHWAYS CODE

Section 263.1

263.1. The state scenic highway system shall include all of the following state routes:

Routes 28, 35, 38, 52, 53, 62, 74, 75, 76, 89, 96, 97, 127, 128, 150, 151, 154, 156, 158, 161, 173, 197, 199, 203, 209, 221, 236, 239, 243, 247, 254, and 330 in their entirety.

(Amended by Stats. 2019, Ch. 104, Sec. 1. (AB 998) Effective January 1, 2020.)

State of California

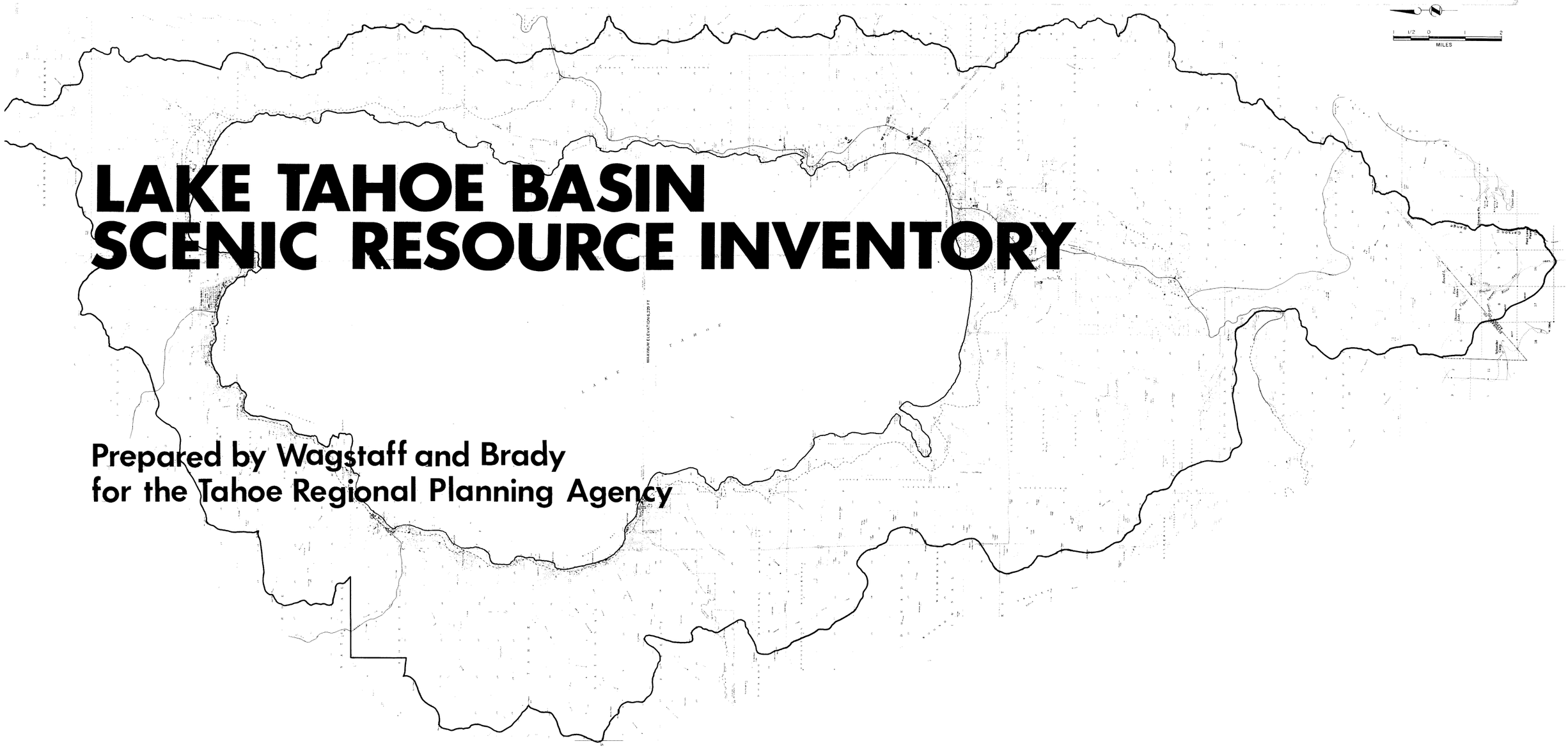
STREETS AND HIGHWAYS CODE

Section 263.4

263.4. The state scenic highway system shall also include:
Route 37 from:
(a) Route 251 near Nicasio to Route 101 near Novato.
(b) Route 101 near Ignacio to Route 29 near Vallejo.
Route 39 from Route 210 near Azusa to Route 2.
Route 40 from Barstow to Needles.
Route 41 from:
(a) Route 1 near Morro Bay to Route 101 near Atascadero.
(b) Route 46 near Cholame to Route 33.
(c) Route 49 near Oakhurst to Yosemite National Park.
Route 44 from Route 5 near Redding to Route 89 near Old Station.
Route 46 from:
(a) Route 1 near Cambria to Route 101 near Paso Robles.
(b) Route 101 near Paso Robles to Route 41 near Cholame.
Route 49 from:
(a) Route 41 near Oakhurst to Route 120 near Moccasin.
(b) Route 120 to Route 20 near Grass Valley.
(c) Route 20 near Nevada City to Route 89 near Sattley.
Route 50 from Route 49 near Placerville to the Nevada state line near Lake Tahoe.
Route 57 from Route 90 to Route 60 near Industry.
Route 58 from Route 14 near Mojave to Route 15 near Barstow.
Route 68 from Monterey to Route 101 near Salinas.
Route 70 from Route 149 near Wicks Corner to Route 89 near Blairsden.
Route 71 from Route 91 near Corona to Route 83 north of Corona.

(Amended by Stats. 1988, Ch. 106, Sec. 12. Effective May 13, 1988. Operative January 1, 1989, by Sec. 31 of Ch. 106.)

LAKE TAHOE BASIN
SCENIC RESOURCE INVENTORY



Prepared by Wagstaff and Brady
for the Tahoe Regional Planning Agency

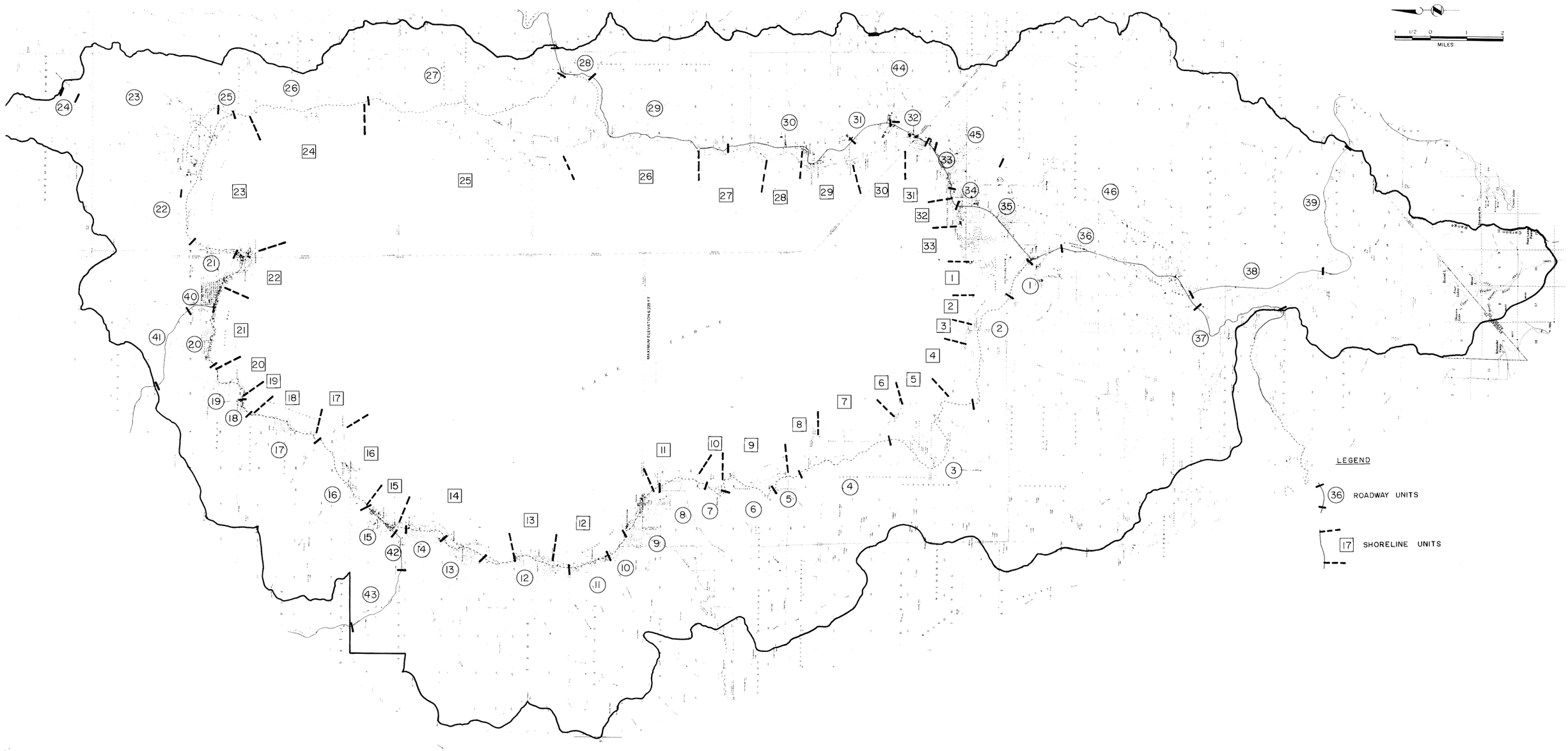


Figure 1. ROADWAY AND SHORELINE UNIT LOCATIONS

SCENIC RESOURCES INVENTORY· TAHOE ENVIRONMENTAL STUDY

ROADWAY UNIT INVENTORY

Introduction

The Lake Tahoe Basin major roadways were surveyed in February, March and May of 1982 for scenic resources, a component of the Tahoe Regional Planning Agency's Environmental Thresholds Study. Scenic resources within each unit were mapped, photographed and described in narrative text.

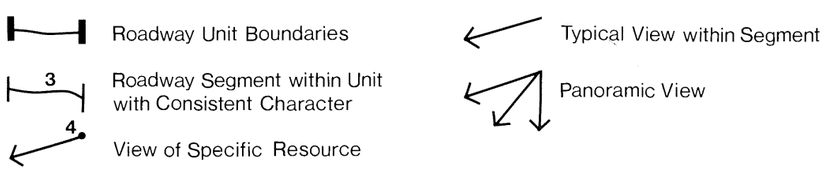
The following routes were surveyed:

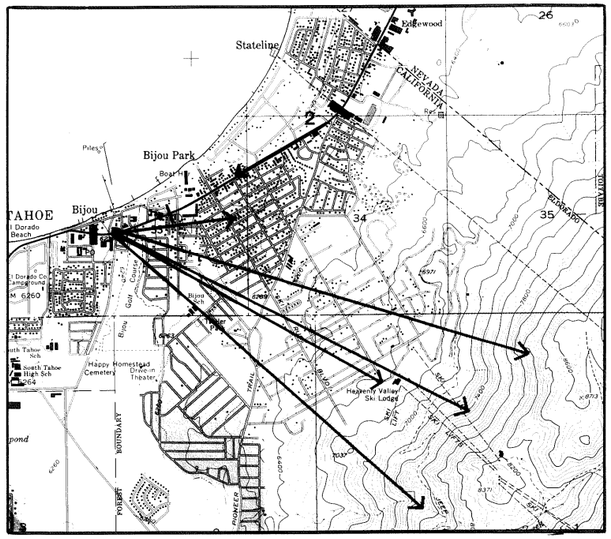
- Route 50, from Echo Summit to Spooner Junction
- Kingsbury Grade, from Route 50 to Tramway Drive
- Route 28, from Spooner Junction to Tahoe City
- Route 89, from Lake Tahoe Boulevard to Route 50
- Mt. Rose Highway, from Route 28 to basin boundary
- Route 267 from Route 28 to basin boundary
- Pioneer Trail

Resource subcomponents identified, mapped and photographed include 1) views from major entry points into the basin; 2) views from roadways of natural landscapes; 3) views from roadway to the lake; and 4) major visual features, such as rock formations, topographical features, beaches, streams and special vegetation patterns or areas.

The survey was conducted in both directions around the lake. Travel routes were inventoried by road units identified in the 1971 U.S. Forest Service Scenic Analysis of Travel Routes. Three units were added for a total of 46 roadway units. The narrative is structured in order of landscape components which would be seen in a counter-clockwise drive around the lake. The summaries identify scenic resources by unit number and resource number, and are keyed to mapped resources. In some cases, two units are described and mapped together.

ROADWAY MAPS LEGEND





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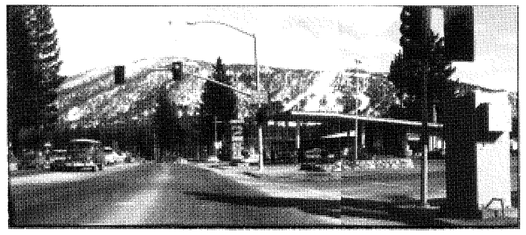

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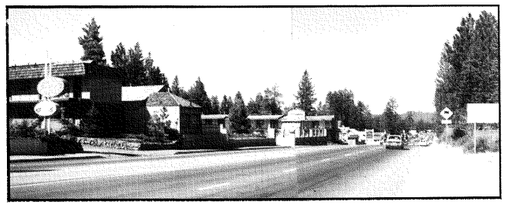


ROADWAY UNIT 33. THE STRIP.

Roadway Unit 33. The Strip

Heavy strip commercial development dominates foreground views beyond the public beach area. In some areas, however, scenic, long-distant background vistas of mountain areas to the southeast are available, including Monument Peak to the east and Mt. Tallac to the southwest. Heavenly Valley ski development is prominent in middleground in vistas between buildings. There are virtually no glimpses of the lake.

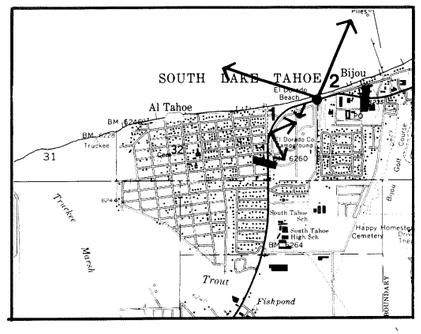
Roadway Unit 33. The Strip Summary

Views of natural landscape from roadway

33-1. Long-distant views to Monument Peak and Heavenly Valley ski area
Scenic quality: moderate
Rating: 2

33-2. Focal view of Mt. Tallac down strip is dominated in foreground by commercial activity and roadway. Some coniferous forest remains on the north side of the road.
Scenic quality: low
Rating: 1

Overall unit scenic quality: low
Rating: 1



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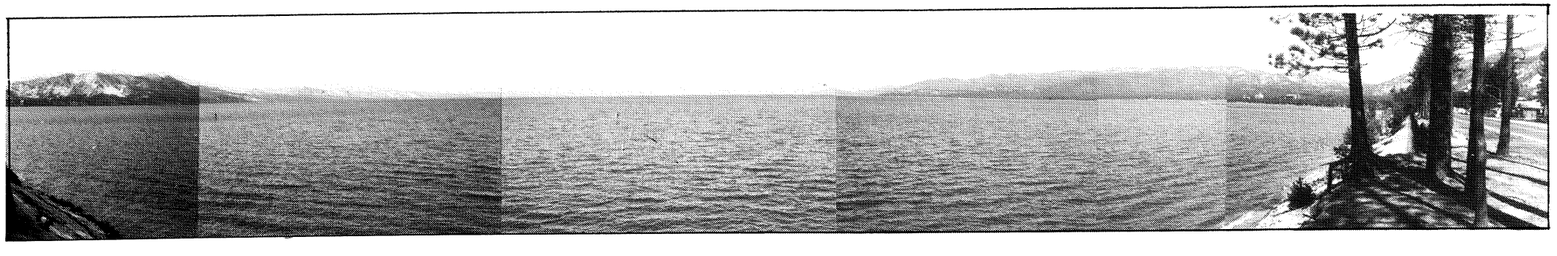


ROADWAY UNIT 34. EL DORADO BEACH.

Roadway Unit 34. El Dorado Beach

This very short road segment is characterized by heavy forest growth to the southeast in park lands of the South Lake Tahoe Recreation Area, and wide expansive panoramas (180°+) of Lake Tahoe and surrounding mountains for about .6 km (.4 mi), where the roadway closely parallels the shoreline. Some commercial development (motels, resorts and restaurants) occurs in forested areas but does not block lake views.

Roadway Unit 34. El Dorado Beach Summary

Views of lake from roadway

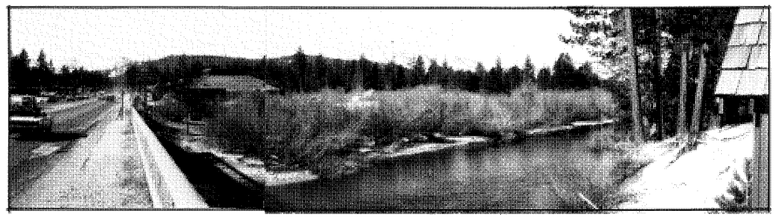
34-2. Major panorama of lake at 150°+ for approximately 6 km to the north, seen through a line of pine trees.
Scenic quality: high
Rating: 3

Views of natural landscape from roadway

34-1. Heavy forested area of South Lake Tahoe Recreation to east and south; no understory, recreation facilities or vehicles are visible.
Scenic quality: moderate
Rating: 2

Overall unit scenic quality: moderate
Rating: 2

1



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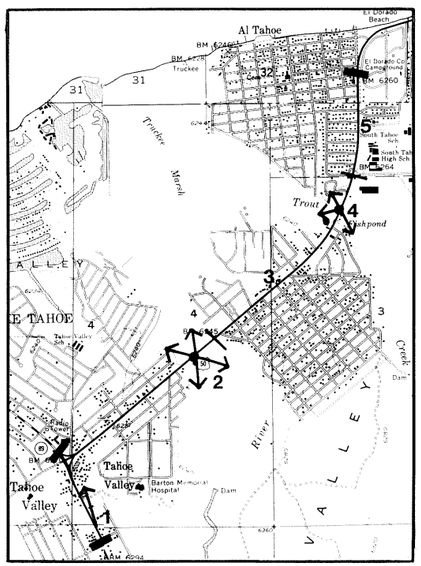

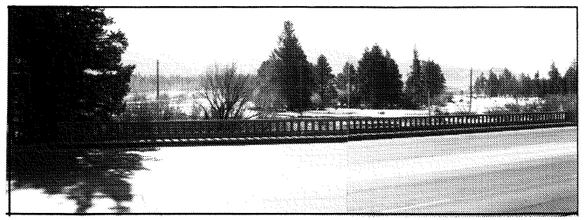

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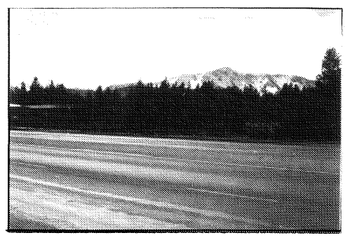

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ROADWAY UNIT 35. AL TAHOE.

Roadway Unit 35. Al Tahoe

Motel/resort development begins and intensifies up to the Route 50 intersection with Route 89 (the "Y"). No mid-distance or long-distance views are readily available in this area. Beyond the "Y", about 1.3 km (.8 mi) of this road segment is characterized by heavy strip development. No relief in foreground views is available until one reaches the stream zone of the Truckee River. Here, undeveloped foreground views of riparian vegetation and small open lands provide a break in the heavy developed character of the roadway. Views of mountain ridgelines to the south are also more readily accessible in this area.

A similar situation exists at the Trout Creek stream zone: heavy strip development exists on either side of the creek with visual relief provided by the open riparian area.

Mixed development continues to the end of the unit, but at a lesser intensity.

Roadway Unit 35. Al Tahoe Summary

Views of natural landscape from roadway

35-1. Commercial strip is set back amongst pine forest screening south of junction with Highway 89.
Scenic quality: low
Rating: 1

35-3. Same as 35-1.

35-5. Commercial and mixed use of low density with good setbacks, retention of large pine trees gives a more natural appearance.
Scenic quality: moderate
Rating: 2

Visual features

35-2. Truckee River stream zone on both sides of Route 50.
Scenic quality: moderate
Rating: 2

35-4. Front Creek stream zone on both sides of Route 50.
Scenic quality: moderate
Rating: 2

Overall unit scenic quality: low
Rating: 1

Roadway Unit 45. Pioneer Trail, North

From Highway 50 southward for almost 2 miles, Pioneer Trail follows the foot of the mountainsides enclosing South Lake Tahoe. The road crosses flattish terrain, with most views of foreground only, limited by development and pine forest. The first section is densely developed, with commercial buildings (mostly motels) near Highway 50, and some apartment buildings. Limited views of the mountains in middleground and of the Heavenly Valley ski area are obtained. The casinos are visible to northbound travellers only at the end of Pioneer Trail. The lake is glimpsed briefly at an intersection. At the southern end of the unit, single-family homes and retention of more pine forest creates a lower density, suburban environment.

Roadway Unit 45. Pioneer Trail, North Summary

Views of lake

45-3. 0.9 mi. from north end of unit. Vista of lake in middleground down road leading to Boat Harbour; brief view, cluttered by utilities and road signs.
Scenic quality: moderate
Rating: 2

Views of natural landscape

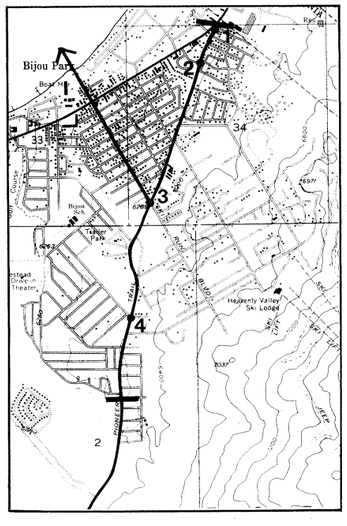
45-2. 0.9 mi. Foreground views of commercial development, housing, and pine trees, with occasional glimpses of mountainsides to the southeast.
Scenic quality: low
Rating: 1

45-4. 0.3 mi. Foreground views of low density housing and trailer park and pine forest with occasional views of mountains to the east in middleground.
Scenic quality: low
Rating: 1

Visual features

45-1. At north end of unit. Middleground view of high-rise casinos.
Scenic quality: moderate
Rating: 2

Overall unit scenic quality: low
Rating: 1



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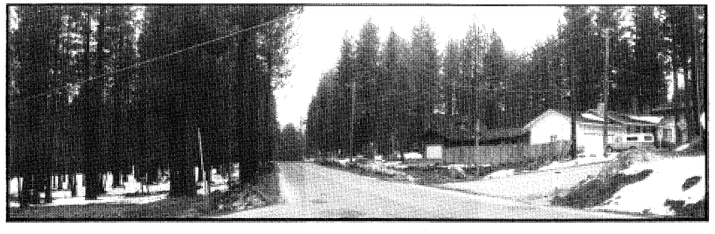

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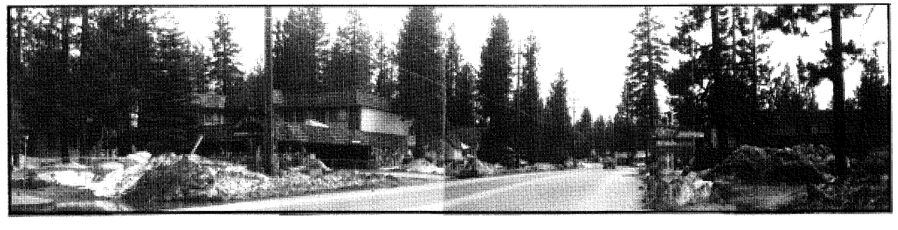


ROADWAY UNIT 45. PIONEER TRAIL, NORTH.

Roadway Unit 46. Pioneer Trail, South

This is a long stretch of road through predominantly natural landscape, in which the road rises and falls gently with rolling topography, finally rejoining Highway 50 at Meyers.

At the northern end, suburban development gives way to considerable stretches of undisturbed landscape, gently sloping and forested. Variety is imparted by views of meadows and water features in foreground, two nodes of residential development, and middleground and background views of mountains on both sides of the road. Observer position and outward views vary as the road alternately dips into creek valleys and ascends low ridges.

Roadway Unit 46. Pioneer Trail, South, Summary

Views of natural landscape

46-2. 1.2 mi. Predominantly natural landscape, canopied and enclosed by pine forest, with fleeting glimpses of mountains to west, east, and north, and of meadows west of the road.
Scenic quality: moderate
Rating: 2

46-5. 0.4 mi. Suburban development (housing and school) dominates foreground views, but attractively situated round shores of a reservoir enclosed by forest; some middleground views of mountains.
Scenic quality: moderate
Rating: 2

46-7. 2.5 mi. Elevated road position provides long-distance views of mountains on both sides as vistas through trees; some development and utilities evident.
Scenic quality: high
Rating: 3

46-9. 1.6 mi. Foreground views of thick forest from roadway with inferior observer position; some single-family homes at low density.
Scenic quality: moderate
Rating: 2

Visual features

46-1. 2.1 mi. from north end. Roadside corral under pine trees, with attractive backdrop of meadow and forest.
Scenic quality: high
Rating: 3

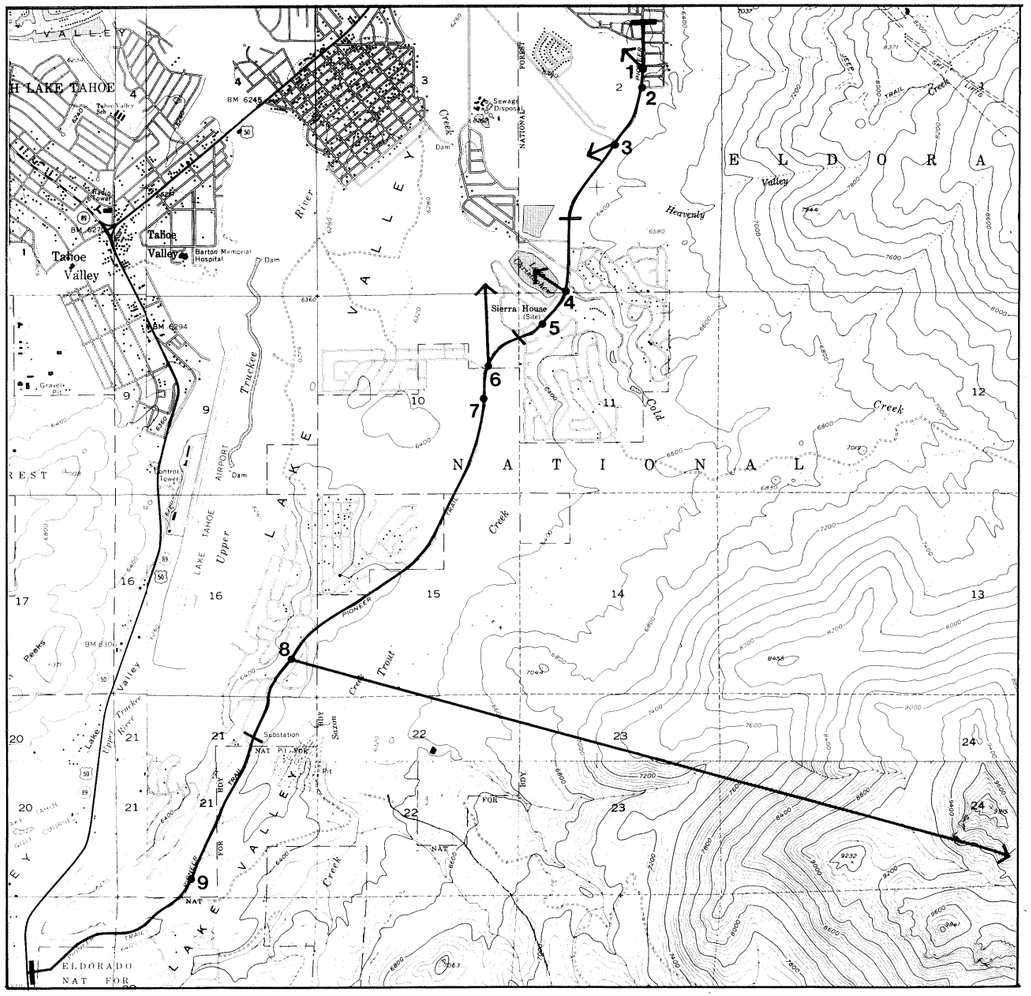
46-3. 2.7 mi. from north end. Overlook of open area with mountains near Echo Summit beyond; view marred by utility poles.
Scenic quality: moderate
Rating: 2

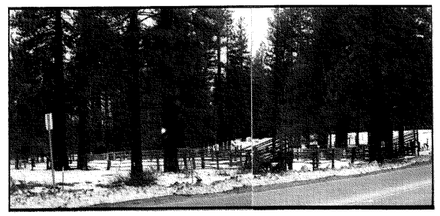
46-4. 3.5 mi. from north end. Lake or reservoir provides distinctive foreground views with water's edge and diverse vegetation.
Scenic quality: high
Rating: 3

46-6. 3.7 mi. from north end. Focal view down Trout Creek, along meadows enclosed by forest; visible housing is well sited at forest edge.
Scenic quality: high
Rating: 3

46-8. 5.8 mi. from north end. Freel Peak forms distinctive summit in a panorama of mountains to the east in far middleground.
Scenic quality: high
Rating: 3

Overall unit scenic quality: moderate
Rating: 2

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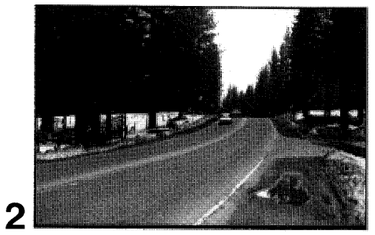
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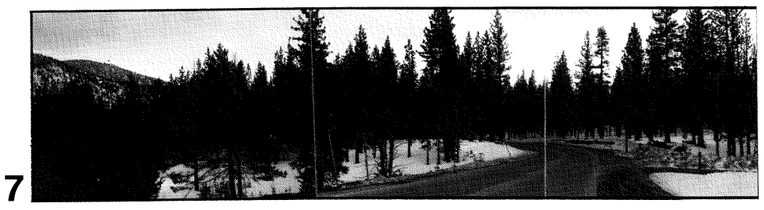
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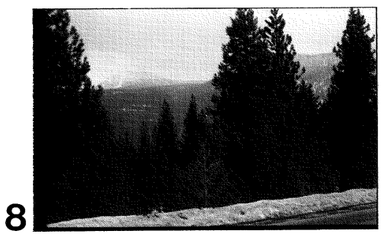
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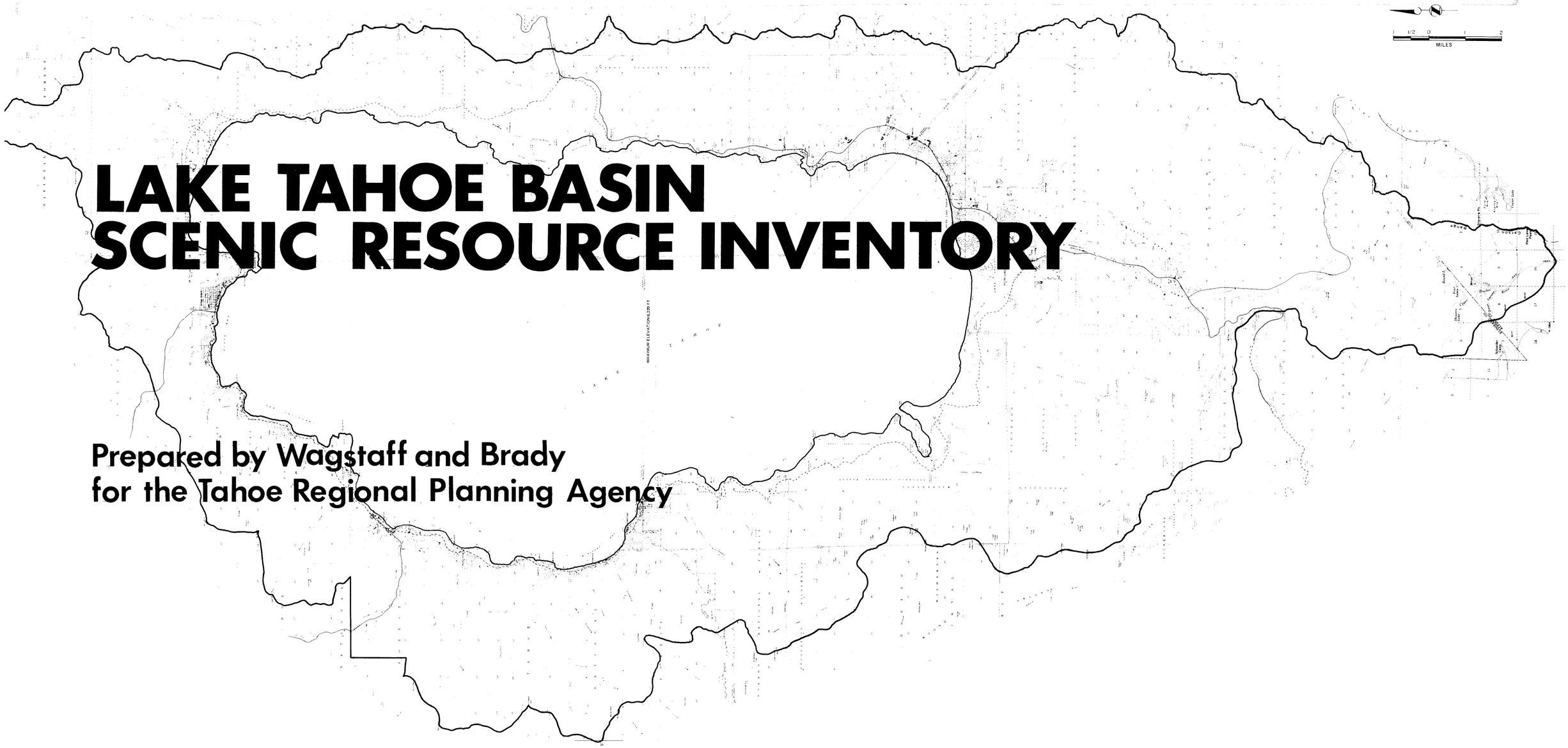
ROADWAY UNIT 46. PIONEER TRAIL, NORTH.

LAKE TAHOE BASIN
SCENIC RESOURCE INVENTORY



Prepared by Wagstaff and Brady
for the Tahoe Regional Planning Agency

SCENIC RESOURCES INVENTORY · TAHOE ENVIRONMENTAL STUDY

SHORELINE UNIT INVENTORY

Introduction

The Lake Tahoe shoreline was surveyed in April of 1982 for its scenic resources, a component of the TRPA's Environmental Thresholds Study. The shoreline was inventoried using the same shoreline units identified in previous evaluations by TRPA and the U.S. Forest Service (1971). Use was made of the U.C. Davis research vessel to provide onshore views of the water's edge and surrounding landscape, from a distance of approximately 1/4 mile. The entire shoreline was navigated, for the most part in a clockwise direction, and each unit surveyed at least once. Landscape subcomponents were recorded and evaluated using a standard rating form, and representative views photographed and mapped. Scenic quality was evaluated in terms of:

1) View of backdrop landscape, from the skyline

2) Character of the shoreline; the water's edge and foreground, seen from the lake

3) Features which are points of particular visual interest on or near the shore

This inventory contains map locations, photographs, narrative descriptions, and scenic quality ratings for the scenic resource subcomponents and units. Figure 1 shows the location of the units. Standard rating forms used in the field for scenic quality evaluations are available for review at the Tahoe Regional Planning Agency office in South Lake Tahoe.

The following paragraphs characterize the predominant scenic resources found in typical shoreline units, and identify the major sources of landscape variety which occur in the basin as seen from the lake.

General Character of Typical Shoreline Units

Backdrop: Hills and ridges, approximately 6300-7500 feet in elevation, seen in middleground (1/2 to 3-5 miles) from inshore waters, and forming a fairly low smooth skyline in panoramic views. They tend to be without distinct features, predominantly forested (mixed conifers), with few distinct vegetation patterns and few signs of man-made development. In areas where the hills are set back farther from the shore (e.g., the south shore and Units 11 and 14), the backdrop may be only glimpsed over or screened altogether by shoreline elements, seen from inshore. Landscape subcomponents of the typical backdrop tend to be rated moderate (2) in scenic quality.

Shoreline: Land is flattish or moderately sloping, with gravel beach or rocks at water's edge. Vegetation approaches the shore closely, with foreground views enclosed usually by pine forest. Scrub vegetation occurs in places. Single-family homes and limited condominium/cluster development often is evident, but not obtrusive among the trees near the shore. Limited views of landscaped areas occur in places, with grass, retaining walls, driveways, etc. There may be glimpses of traffic and occasional road scars near or above the lake. Small numbers of piers, small boats, and buoys occur and may clutter the shoreline at higher density. Landscape subcomponents of the shoreline tend to be rated low-moderate (1-2) in scenic quality.

Features: Usually no major points of vivid visual interest occur. Low-key features may include: creek outlets marked by deciduous vegetation with distinctive color/texture contrasts, especially with willow; individual houses of atypical design, prominent on or above the water's edge.

Such features tend to be rated moderate-high (2-3) in scenic quality, unless man-made features degrade the unit and intactness of the shoreline.

The typical unit generally attains an overall scenic quality rating of 2 (moderate).

Major Variations in Shoreline Units

Backdrop

1. Mountain peaks. Distinctive peaks, alpine summits, and crags create a vivid skyline above approximately 7500 feet; slopes are usually precipitous, with avalanche chutes and other vegetation patterns providing strong color contrast, particularly with snow. Landscape components in this category usually are rated high (3-3+) in scenic quality; for example:

west shore units 5-8, (Mt. Tallac to Rubicon Peak),
north shore units 21-2, (Mt. Baldy et al.),
east shore unit 30 (Monument Peak to Freel Peak), and
south shore units 1-4, 31-33 (Monument Peak to Freel Peak).

2. Ski run clearings. Vertical linear clearings create strong visual contrasts, especially in winter, on steep forested mountainsides in middleground and background. Unity and intactness of the backdrop may be considerably reduced, with ratings of low-moderate (1-2) scenic quality, for example:

west shore unit 12 (Homewood/Tahoe ski bowl),
east shore unit 30 (Heavenly Valley), and
southshore units 31-32 (Heavenly Valley).

3. Other man-made impacts. Prominent highway scars (for example, Units 6, 23, 26) and housing developments on or above steep slopes (for example, Units 9, 15, 16, 27) create strong visual contrasts which reduce scenic quality ratings of middleground backdrops to low (1).

Shoreline

1. Extensive sandy beaches. Uninterrupted stretches of sandy beach, backed by pine forest with well-integrated low-density housing or no development at all, create attractive shorelines where the turquoise color of the water is often most pronounced. Scenic quality ratings are generally moderate-high (2-3); for example:

north shore units 21, 23
east shore units 24, 26, 28-30, and
south shore units 104, 31.

2. Marsh and meadow areas. Sizable openings with grass and/or marsh vegetation create important variety along otherwise forested shores. Most are enclosed by forest, contain distinct color contrasts of vegetation types, and are largely undegraded by man-made developments, attaining scenic quality ratings of high (3); for example:

south shore units 1, 33, and
east shore unit 30.

3. High-density residential/commercial development. Often associated with visible utility lines, traffic, road scars, shoreline clutter of piers/stairways/boathouses/ramps, etc., and partial or no screening by pine forest. Architectural types and colors sometimes conflict. Views onshore to foreground features, e.g. creeks, marsh, or small meadows, may be dominated or blocked by structures. Some erosion is often evident on banks and slopes. Natural landscape unity and vividness is reduced, usually leading to ratings of low (1) scenic quality; for example:

south shore units 1, 31-32,
west shore units 9, 15-16, 18-20,
north shore units 21-23, and
east shore unit 27.

Features

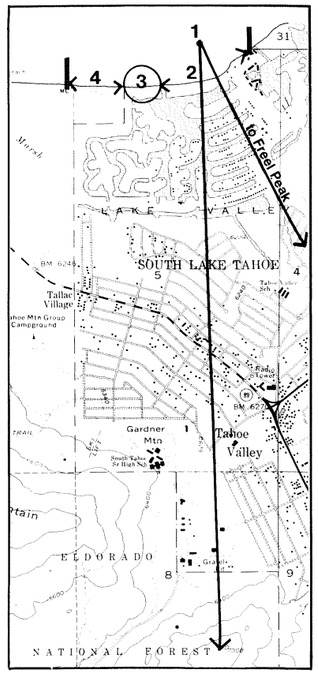
A variety of natural features may enhance the scenic quality of shoreline units; for example, distinctive landforms (Units 13, 26-27, 29-30); unusual boulders/rock formations at water's edge (Units 8, 16, 25-26, 28); pronounced promontories which act as landmarks (Units 5, 8, 11, 16-67, 22-23, 24, 26); and small meadow/marsh areas (Unit 4). Depending on the prominence of the features, they attain scenic quality ratings of 2-3 (moderate-high).

Man-made features may either enhance or detract from the shoreline. Distinctive, old, and historic structures (for example, in Units 6, 10, 12, 23, 25, 26) which are well integrated with the site may attain ratings of 3 (high scenic quality); structures which are very large in scale, or which intrude upon and dominate the water's edge (for example, in Units 1, 15, 20, 22, 27, 30) may reduce scenic quality ratings to low (1).

The shoreline unit summaries that follow describe significant views and features within each unit, and rate the scenic quality of each resource and the overall unit. The views and features are keyed to the accompanying map and photographs for each unit.

SHORELINE MAPS LEGEND

Shoreline Unit Boundaries
3 Shoreline Section
8 Visual Feature
5 Major View of Backdrop
7 Panoramic View of Backdrop

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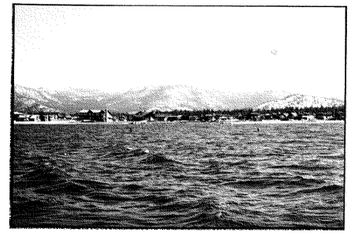
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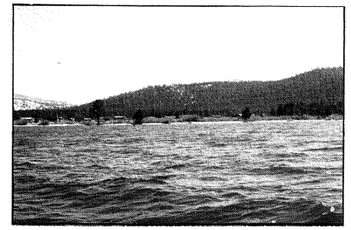
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Shoreline Unit 1. Tahoe Keys Summary

Background Views

1.1 Lower mountains in middleground, Freel Peak in background.
Scenic quality: high
Rating: 3

Shoreline Views

1.2 Tahoe Keys view is of low flat undulating sandy shore; few trees; shore dominated by residential development of various colors and shapes, not particularly well designed to fit the site.
Scenic quality: low
Rating: 1

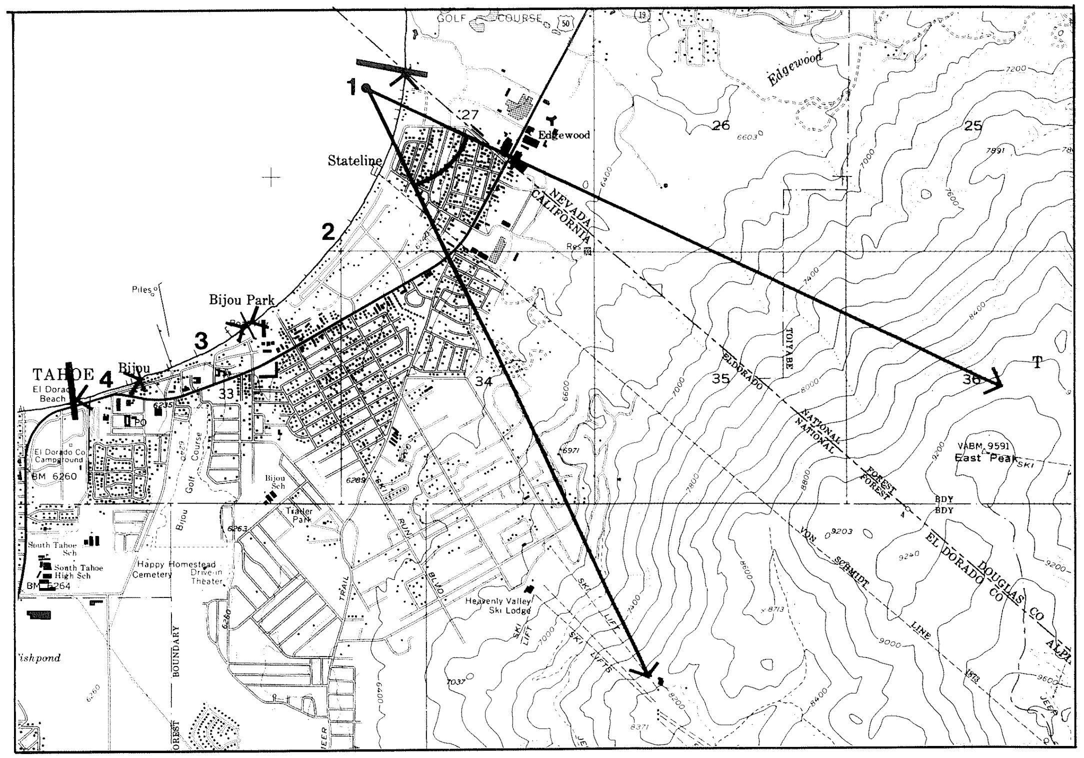
1.4 View of marsh is diversity of color/texture provided by willows, scattered pines, and pine backdrop with flat shores. Houses are visible beyond.
Scenic quality: moderate
Rating: 2

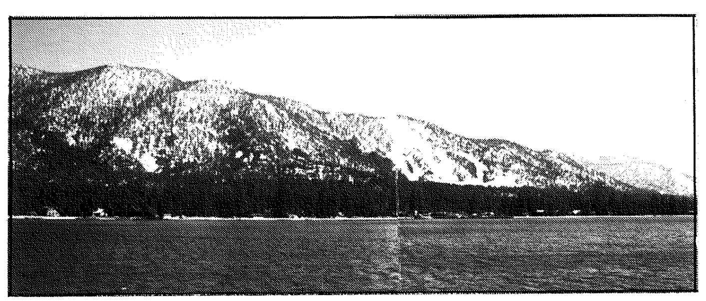
Visual Features

1.3 The Marina entry is an inlet with large new houses, unvegetated shore.
Scenic quality: low
Rating: 1

Overall unit scenic quality: low
Rating: 1

SHORELINE UNIT 1. TAHOE KEYS





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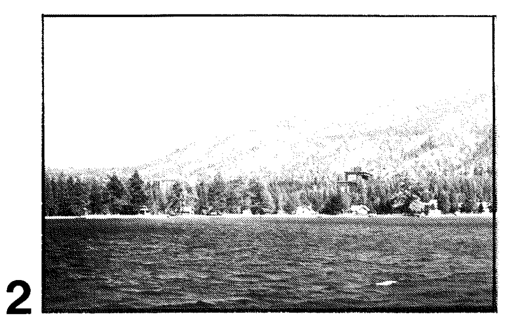

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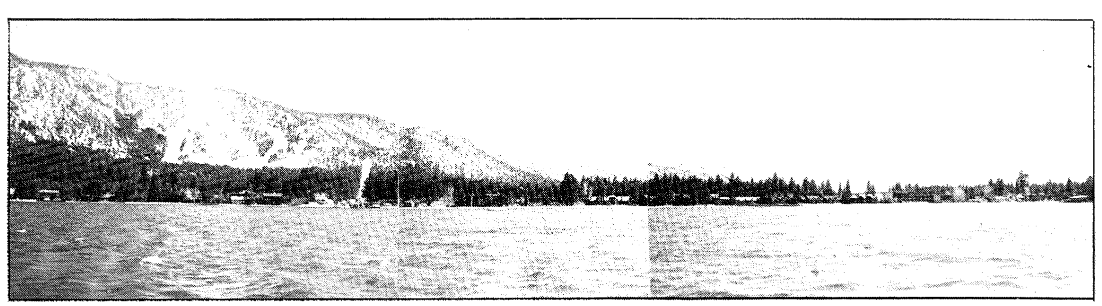

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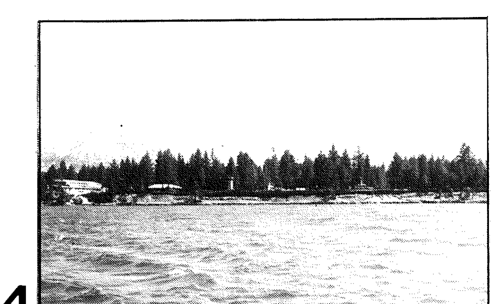

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Shoreline Unit 31. Bijou Summary

Background Views

31.1 Heavenly Valley ski slopes and stateline clearing scar are very prominent linear contrasts which degrade an otherwise very scenic mountain backdrop in middleground. Some road scars are visible near the ski development.
Scenic quality: moderate
Rating: 2

Shoreline Views

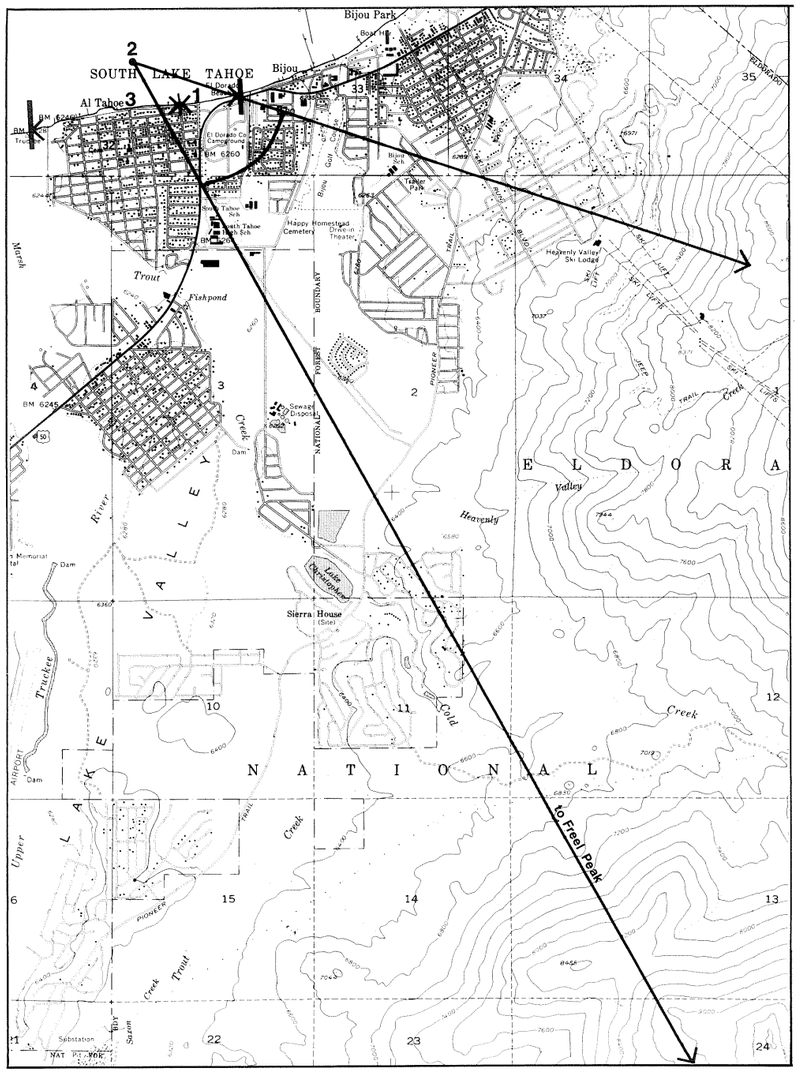
31.2 Stateline has low sandy shore with residential development among pine trees; casinos are visible over tree tops but not prominent; several piers, breakwaters, and tour boat dock line the shore.
Scenic quality: moderate
Rating: 2

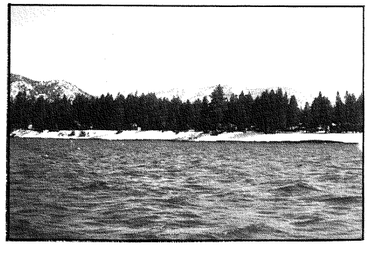
31.3 Chevron signs/marinas are visually prominent on low shore. Big apartment/ commercial buildings are visible; there is less screening by trees in places. Some cluster housing beside sandy beach is quite well designed. Large pier, many buoys, colorful boats are features.
Scenic quality: moderate
Rating: 2

31.4 At south end, a steep, low bank below Highway 50 is eroding, partly supported by unattractive riprap and concrete wall. Traffic is prominent; roadside trees are dying. Commercial development is evident beyond highway.
Scenic quality: low
Rating: 1

Overall unit scenic quality: moderate
Rating: 2

SHORELINE UNIT 31. BIJOU





Shoreline Unit 32. Al Tahoe Summary

Background Views

32.2 Freel Peak has reddish summit which is distinctive among high mountain ridges in background, snowy for much of year. Heavenly Valley is also visible.
Scenic quality: high
Rating: 3

Shoreline Views

32.1 Eldorado Beach has prominent view of highway, unsightly retaining wall, and shore beach. Many buoys clutter the water.
Scenic quality: low
Rating: 1

32.3 View is of low steep bank, with flat forested area behind for the most part with dense housing. In places, condominiums and cluster housing of diverse styles and colors degrade the water's edge. Unsightly breakwater is near the west end.
Scenic quality: low
Rating: 1

Overall unit scenic quality: low
Rating: 1

SHORELINE UNIT 32. AL TAHOE

36. EL DORADO BEACH AND CAMPGROUND

El Dorado Beach is located on the south shore of the lake on Lakeview Avenue between Highway 50 and Harrison Avenue. The beach is owned and operated by the City of South Lake Tahoe. The facilities include a boat launch and picnic area in addition to the beach.

The El Dorado recreation area is actually divided into three areas by the junction of Lakeview Boulevard and Highway 50 (Lake Tahoe Boulevard). The beach portion consists of a long narrow stretch of land bordered by the lake to the north and Lakeview Avenue and Lakeshore Boulevard to the south. The second portion of the recreation area, which contains the parking and restroom facilities, is a small triangular area defined by the intersection of Lakeview Avenue, Lake Tahoe Boulevard, and Harrison Avenue. The third portion of the recreation area is the camping area which is situated south of Highway 50.

These streets are significant in determining the character of the recreation area, particularly since Highway 50/Lakeshore Boulevard, which divides the site, is such a busy thoroughfare. The presence of traffic is felt both visually and aurally from everywhere except the beach and the campsites away from the road. These thoroughfares give the area a very urban feeling and create a fragmentation which discourages movement from one area to another.

The parking area is a pleasantly landscaped lot which also includes the restroom facilities and the entry to the boat ramp. From this area the lake is visible through the stand of trees on the other side of Lakeview Avenue. This stand of trees covers a very flat, narrow strip of land which runs along the edge of Highway 50. No other vegetation grows in this area, so the contrast between the trees and the very flat, bare ground is quite distinctive. The picnic area is located within this wooded strip. From the picnic area, one has an elevated perspective down to the lake which is approximately 20-25 feet lower. To the east, casinos tower over the landscape. Other development is evident around the Stateline area and then begins to thin out as one looks farther north. Directly north, the opposite shoreline is very distant across the length of the lake. The shoreline becomes very distinctive around the Emerald Bay area but the view is cut off by the motel perched on the cliff adjacent to the west end of the beach. At the beach level three piers extend out into the lake. The campground area south of Highway 50 is densely forested with conifers and provides no significant external views. Landscaping along Highway 50 has recently been added to create some buffer between the campsites and the busy roadway.

The view of the lake does not change significantly as one descends to the beach. The main difference is the removal of the distracting backdrop of traffic which accompanies the view from the picnic area. The change in elevation from picnic area to beach significantly decreases one's awareness of the street above.

El Dorado Beach--Components

Views from the Recreation Area

36-1. View of lake from the picnic area (Photos #12-17).
Rating: 12 Unity 4; Vividness 3; Variety 3; Intactness 2.

36-2. View of lake from the east end of the recreation area (Photos #1-7).
Rating: 12 Unity 4; Vividness 3; Variety 3; Intactness 2.

Natural Features of El Dorado Beach

36-3. Stand of pine trees (Photos #15, 16, 23).
Rating: 10 Unity 3; Vividness 3; Variety 2; Intactness 2.

36-4. Beach (Photos #21, 24, 25, 27).
Rating: 9 Unity 4; Vividness 2; Variety 2; Intactness 1.

Man-Made Features of El Dorado Beach

36-a. Restrooms (Photos #14, 32)
Rating: 11 Coherence 3; Condition 3; Compatibility 2; Design Quality 3.

36-b. Parking area (Photos #12, 14).
Rating: 14 Coherence 3; Condition 4; Compatibility 3; Design Quality 4.

36-c. Picnic area (Photos #7, 15, 16, 22, 23).
Rating: 12 Coherence 3; Condition 4; Compatibility 3; Design Quality 2.

36-d. Boat ramp (Photos #13, 17, 18).
Rating: 10 Coherence 3; Condition 4; Compatibility 1; Design Quality 2.

Summary:

El Dorado Beach is different from the majority of the recreation areas in that it is located more in an urban than a natural setting. This is not inherently disadvantageous, although in this case elements such as the traffic, motels, and the casinos do compete with more scenic natural features. The view down the length of the lake is a scenic viewshed but because of the distance it is not especially distinctive.

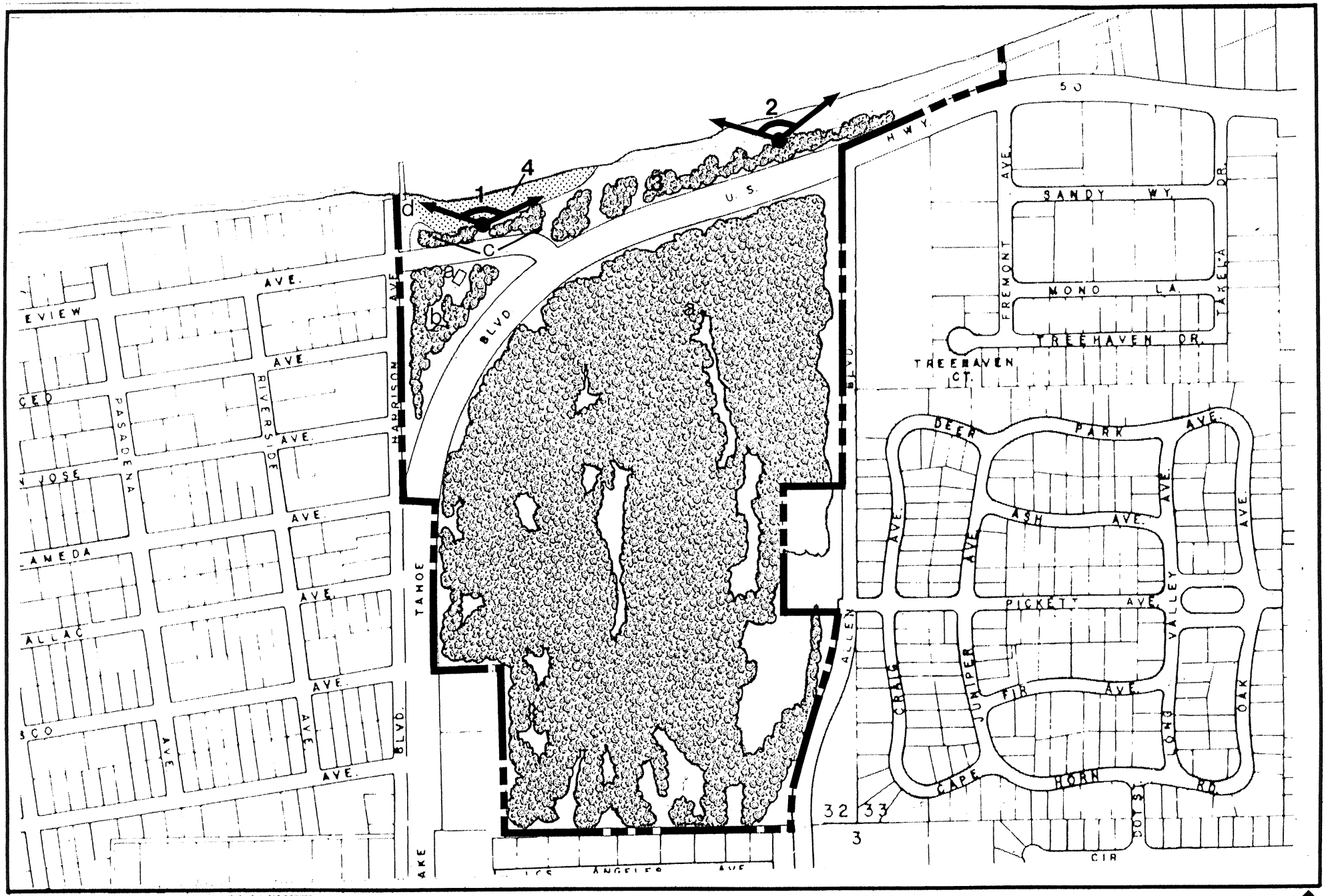


Figure 36a Scenic Resources

NORTH

EL DORADO BEACH AND CAMPGROUND

SCALE: 1"=400'

Elements That Contribute to the Scenic Quality of El Dorado Beach

A. Panoramic view north across the lake

B. The forested, yet manicured picnic area presents an interesting combination of urban and natural elements. In addition, its elevated position above the lake adds a dramatic character to the view.

C. The enclosed beach area forms a kind of natural amphitheater facing the lake.

Elements That Detract from the Scenic Quality of El Dorado Beach

A. The proximity of Highway 50 to the picnic area and the constant movement and noise of automobiles significantly affects the use of this area.

B. The hotel and casino development east of the recreation area stands out boldly above the forest cover and is completely out of scale with its surroundings.

C. The motel just west of the recreation area is an unattractive foreground element that projects out in front of one of the more distinctive landscape features in the viewshed (i.e., Emerald Bay area).

D. The boat launch area is a major structure where it passes under the roadway. The mass of concrete and the cyclone fencing around it visually dominate the west end of the beach. The combined effect of this area with the motel adjacent to it is distinctly unappealing visually.

E. The erosion of the bank at the east end of the beach is undercutting existing trees and preventing the establishment of new vegetation.

Recommendations for Preserving the Scenic Quality of El Dorado Beach

A. Area west of El Dorado Beach

1. The area that is visually sensitive from the recreation area includes just the first few parcels to the west which have already been developed. Any future development or change of status of this area should require measures to mitigate the existing visual problems. This would consist primarily of landscaping to screen the structures and soften some of the hard edges. (Photos #7, 17, 18, 36)

B. Area east of El Dorado Beach

1. Existing trees should be preserved as a visual screen between structure(s) and major public use areas. This is particularly important on the beachfront since structures sited there are visible from many points around the lake.

2. Structures should not be permitted to exceed the height of the existing tree cover.

3. Development should not be permitted where tree cover is too sparse to visually absorb new structures, road cuts, and other attendant improvements.

4. Use of reflective materials should be restricted and use of materials which blend into the surrounding landscape encouraged. Hues should fall within a range of natural colors that complements rather than contrasts with the existing vegetation and earth tones. Values should be equal to or darker than those of surrounding colors. The recommendations should apply to all visible surfaces of structures including roofs, siding, fences, etc. (Photos 1, 2, 21, 25)

C. El Dorado Beach

1. Some effort to lessen the impact of Highway 50 on the picnic area is necessary. Screening and/or buffering is needed along the edge of the recreation area which borders the busy thoroughfare. Either structural or landscape solutions could be used. The best solution would be to screen the view of the road; however, even a buffer that provides only psychological relief would be an improvement. (Photos #1, 22, 23)

2. Landscaping should be introduced on the slopes on either side of the boat ramp tunnel to mitigate the visual impact of this structure and to screen the development to the west. The plantings would have to be of significant size to be effective. If the cyclone fencing were replaced with wooden fencing, the rather industrial look it currently gives the boat ramp area would be mitigated.

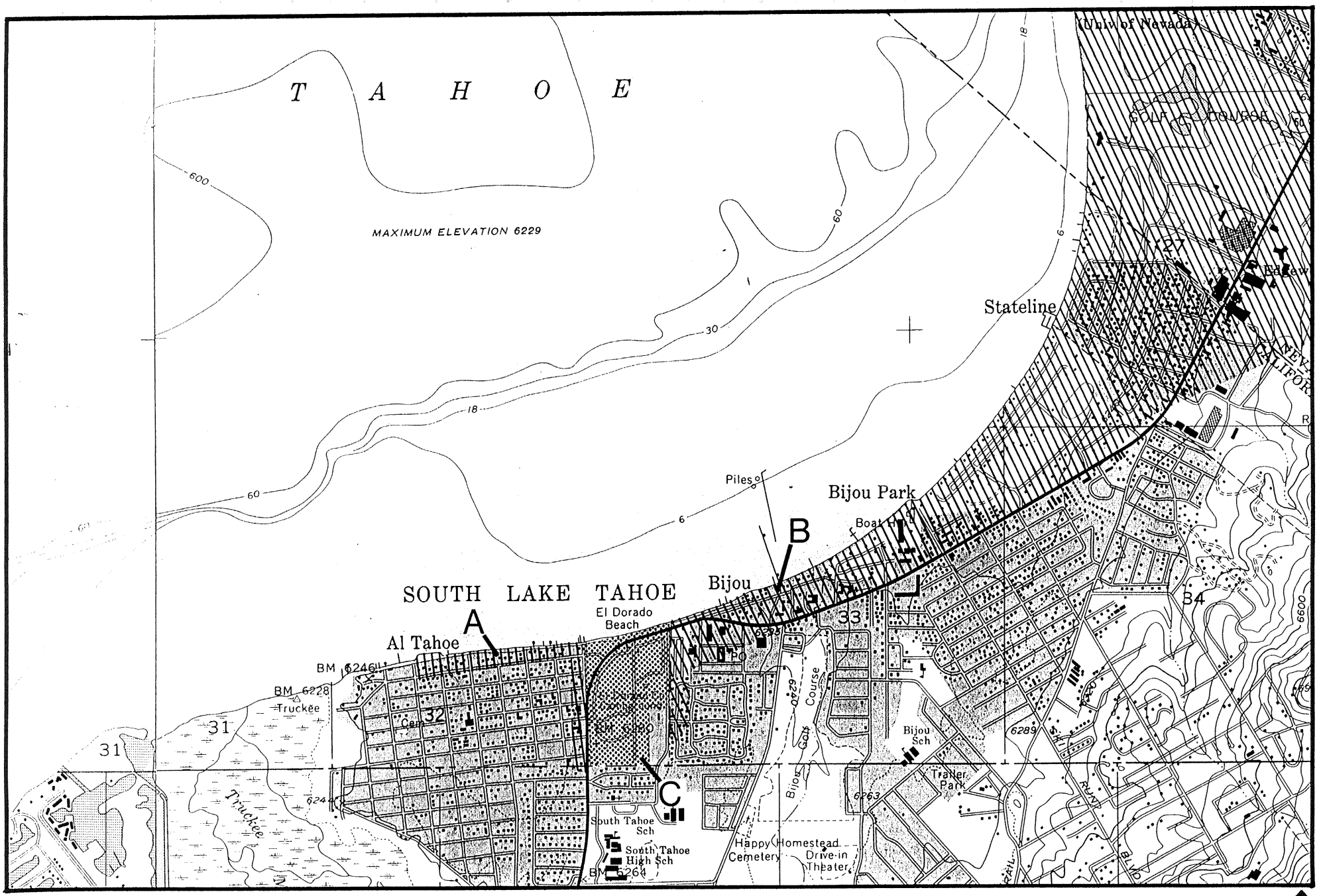


Figure 36b Visually Sensitive Areas

EL DORADO BEACH AND CAMPGROUND

SCALE: 1"=2000'

37. HEAVENLY VALLEY

The Heavenly Valley ski resort is located on the south shore of the lake just south of the city limits of South Lake Tahoe. The resort is privately owned and operated, although the ski slopes are located on national forest lands.

Entry to the recreation area is from Wildwood Avenue into a large plane of parking that spreads out on two levels at the foot of the mountain. The slopes rise steeply to the southeast and are lightly covered with conifer forest. A good deal of the rocky slope is revealed between the trees. There are two main vertical swaths up the hill that have been cleared. The vegetation in the lower portion of these areas is very sparse, consisting primarily of grasses. The upper portion is almost completely unvegetated, revealing the light-colored rocky soil. To the east of the ski area the hillside becomes more distinctive, revealing a much more rugged terrain marked with rocky outcroppings. Toward the bottom of this slope four or five houses have been built. The main lodge, which is located at the foot of the ski slope on the western side of the parking area, is a long, low, boxy building partially set into the hillside. Extending from the east end of the lodge all the way across the foot of the slope is a concrete block retaining wall topped with a cyclone fence. This wall, which averages about 10 feet in height, separates the ski area from the parking area. Another structure is situated at the east end of the parking lot. This shed-roofed structure houses the tram which takes visitors up to the lodge at the top of the slopes.

The north side of the resort is bordered by conifer forest. Several structures are visible, although they are partially concealed by the trees. At the northeast corner of the property a multi-story structure stands out boldly because of the absence of trees between it and the recreation area. To the west, the topography slopes away enough to make the range of mountains visible over the top of the trees.

Heavenly Valley--Components

Views from the Recreation Area

37-1. View from west end of parking lot (Photos #12-15).
Rating: 9 Unity 3; Vividness 2; Variety 2; Intactness 2.

37-2. View from east end of parking lot (Photos #30-37).
Rating: 12 Unity 3; Vividness 4; Variety 3; Intactness 2.

37-3. View from tram area (Photos #19-24).
Rating: 12 Unity 3; Vividness 4; Variety 3; Intactness 2.

Natural Features of Heavenly Valley

37-4. Ski slope (Photos #3, 18-22, 33).
Rating: 12 Unity 3; Vividness 4; Variety 3; Intactness 2.

37-5. Conifer forest (Photos #32, 33, 34).
Rating: 11 Unity 2; Vividness 3; Variety 3; Intactness 3.

37-6. Rocky hillside east of the ski slopes (Photos #16, 23, 24, 35, 36).
Rating: 14 Unity 3; Vividness 4; Variety 3; Intactness 4.

Man-Made Features of Heavenly Valley

37-a. Main lodge (Photos #12, 13, 37).
Rating: 9 Coherence 2; Condition 3; Compatibility 2; Design Quality 2.

37-b. Tram terminal (Photos #14, 25, 28).
Rating: 12 Coherence 2; Condition 4; Compatibility 3; Design Quality 3.

37-c. Parking area (Photos #13, 14, 15, 27, 28, 30, 31).
Rating: 8 Coherence 2; Condition 2; Compatibility 2; Design Quality 2.

Summary:

Heavenly Valley is the largest of the ski areas in the basin and has scenic qualities and problems that correspond to its size and its volume of visitor traffic. The mountain slopes are higher and more distinctive than in the other areas; however, the heavy use of these slopes has left them very worn looking. The lodge and parking areas lack positive scenic qualities and appear to have been designed solely with functional criteria. The distant view of the mountains to the west adds a scenic dimension that is unique for ski areas in the basin.

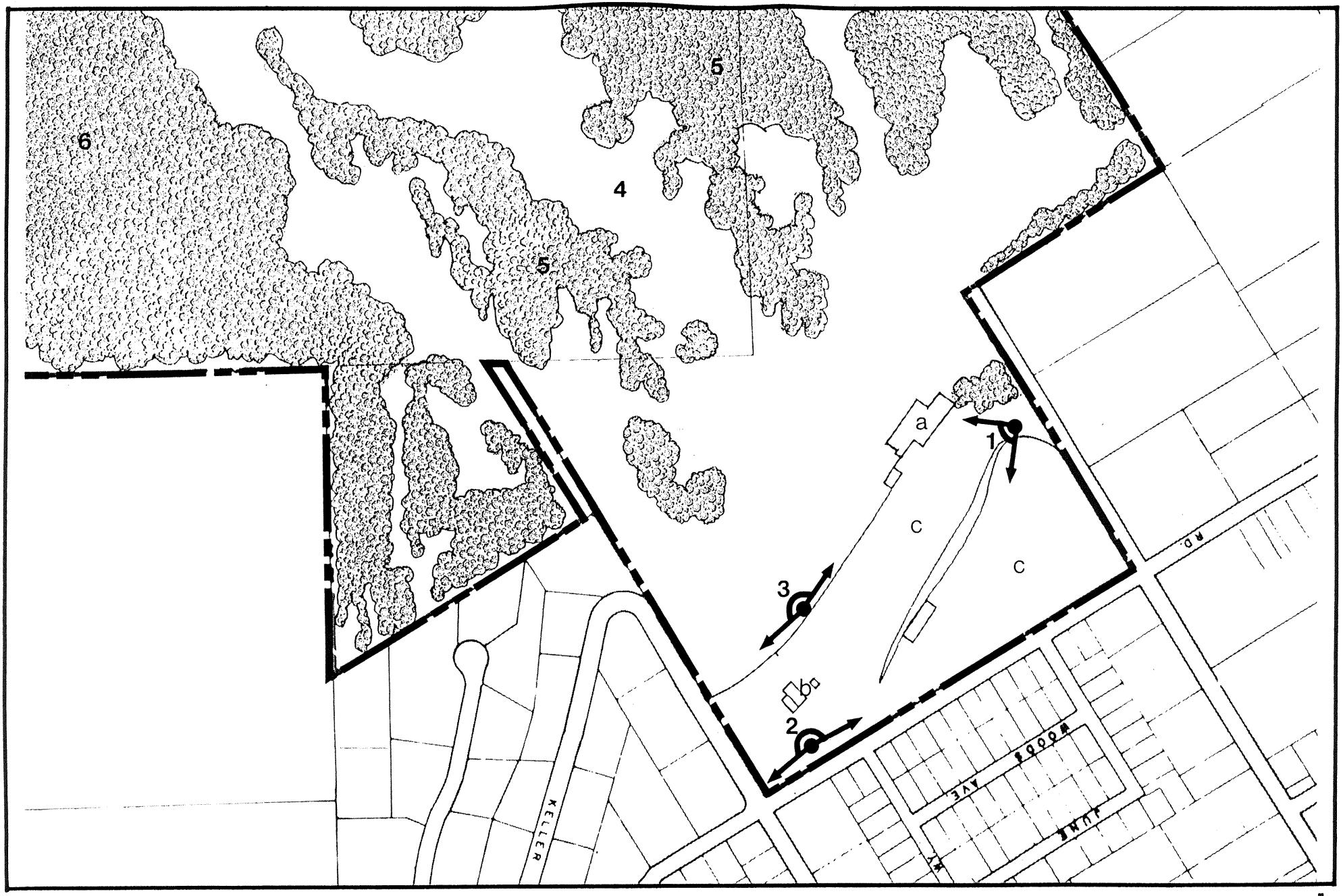


Figure 37a Scenic Resources

HEAVENLY VALLEY

SCALE: 1"=400'

Elements That Contribute to the Scenic Quality Heavenly Valley

A. The verticality of the steep mountain slopes.

B. The conifer forest which surrounds the resort area.

C. The rocky outcrops on the hillside east of the ski slopes.

D. The view of Mt. Tallac and other mountain peaks to the west.

Elements That Detract from the Scenic Quality of Heavenly Valley

A. The cleared ski slopes are very worn looking from intensive use and because of the difficulty of vegetating the rocky slopes. The ski runs are very linear and do not blend well with the natural vegetative and topographic patterns. The resulting visual impression is that the mountain has been scarred.

B. The ski lodge is a very large plain structure that has very few qualities worthy of note. Its size, absence of quality, and central location make it a visually prominent feature that detracts from its surroundings.

C. The concrete block wall across the foot of the slope creates a physical and visual barrier between the parking area and the ski slopes. It makes the viewer more aware of the separation of the built environment and the natural landscape.

D. The houses on the hillside east of the ski slopes are not well concealed by the sparse tree cover, and they compete with the natural features (i.e., the rocky hillside) for the viewer's attention.

E. The multi-story visitor residential building east of the parking area stands out boldly because of the absence of forest cover between it and the recreation area and because of the metal fascia which reflects the sunlight.

F. The large expanse of paved parking area is visually dominant whether empty or full, because of its size and lack of any mitigating measures. The embankment that separates the upper lot from the lower lot is poorly maintained and unattractive (e.g., asphalt paving is breaking along edges and existing vegetation looks weedy).

Recommendations for Preserving the Scenic Quality of Heavenly Valley

A. Rocky hillside to the northeast of the ski area

The rocky outcroppings and sparse forest cover on the hill contribute greatly to the overall quality of the recreation area. Maintaining the natural condition of this hill is important since the appearance of the adjoining ski slope has been so altered. Because the tree cover is sparse, further development would be difficult to conceal, and it is recommended that it be sited in such a manner that it is not visible from the ski area. (Photos #16, 23, 24, 35, 36)

B. Forested areas bordering the resort to the northwest

1. New development should be visually screened from the recreation area. Structures should be sited so that existing trees are preserved as a visual screen.

2. Structures should not be permitted to exceed the height of the existing tree cover.

3. Use of reflective materials should be restricted and use of materials which blend into the surrounding landscape encouraged. Hues should fall within a range of natural colors that complements rather than contrasts with the existing vegetation and earth tones. Color values should be equal to or darker than those of surrounding colors. The recommendations should apply to all visible surfaces of structures including roofs, siding, fences, etc. (Photos #15, 27, 28, 30)

C. Heavenly Valley

1. The denuded area of the ski slope should be revegetated. This is particularly important along the lower portions of the slope that are highly visible from the lodge. (Photos #3, 17, 18, 20, 21, 32, 33)

2. Methods for improving the appearance of the lodge should be investigated. Rehabilitation of the structure should aim at introducing a sense of quality to the building's appearance in terms of design and the level of craftsmanship. In addition to alterations in the building's appearance, landscaping should be introduced along the front to mitigate the transition between the parking area and the structure, and to reintroduce some natural elements into this stark man-made landscape. (Photos #12, 13, 37)

3. A redesign of the parking area to decrease its apparent size and its visual impact should be considered. The lot should be divided into smaller areas separated by landscaped islands. This would help decrease the number of automobiles visible at any one time and would reintroduce some natural elements into the landscape area. The embankment between the upper and lower lots should be heavily landscaped to provide a buffer between the two areas and to control erosion. Landscaping should be introduced along the length of the concrete block wall to soften its hard, barren appearance and to mitigate the abrupt change in elevation. (Photos #10, 13-15, 27, 28, 30, 31)

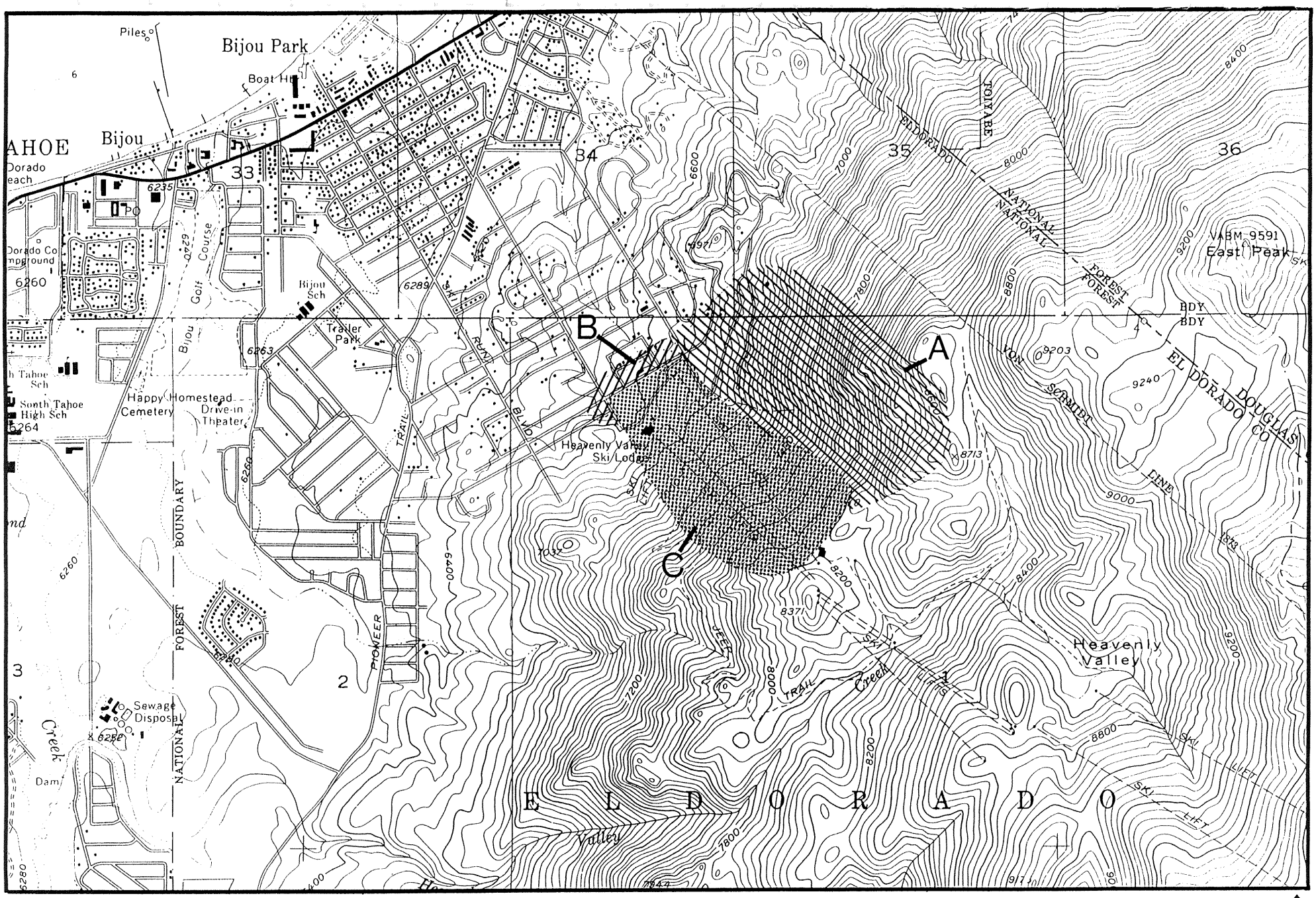
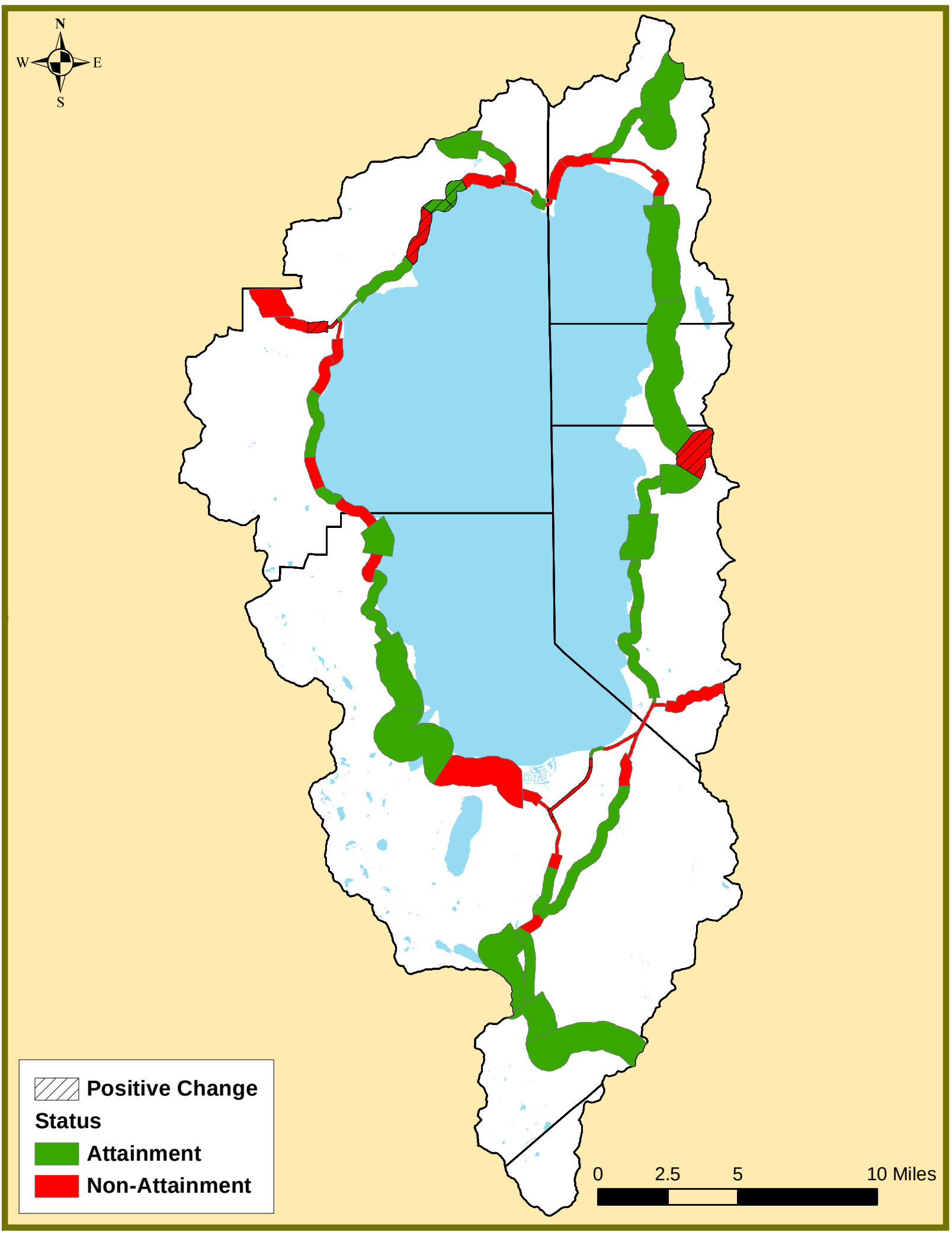


Figure 37b Visually Sensitive Areas

HEAVENLY VALLEY

SCALE: 1"=2000'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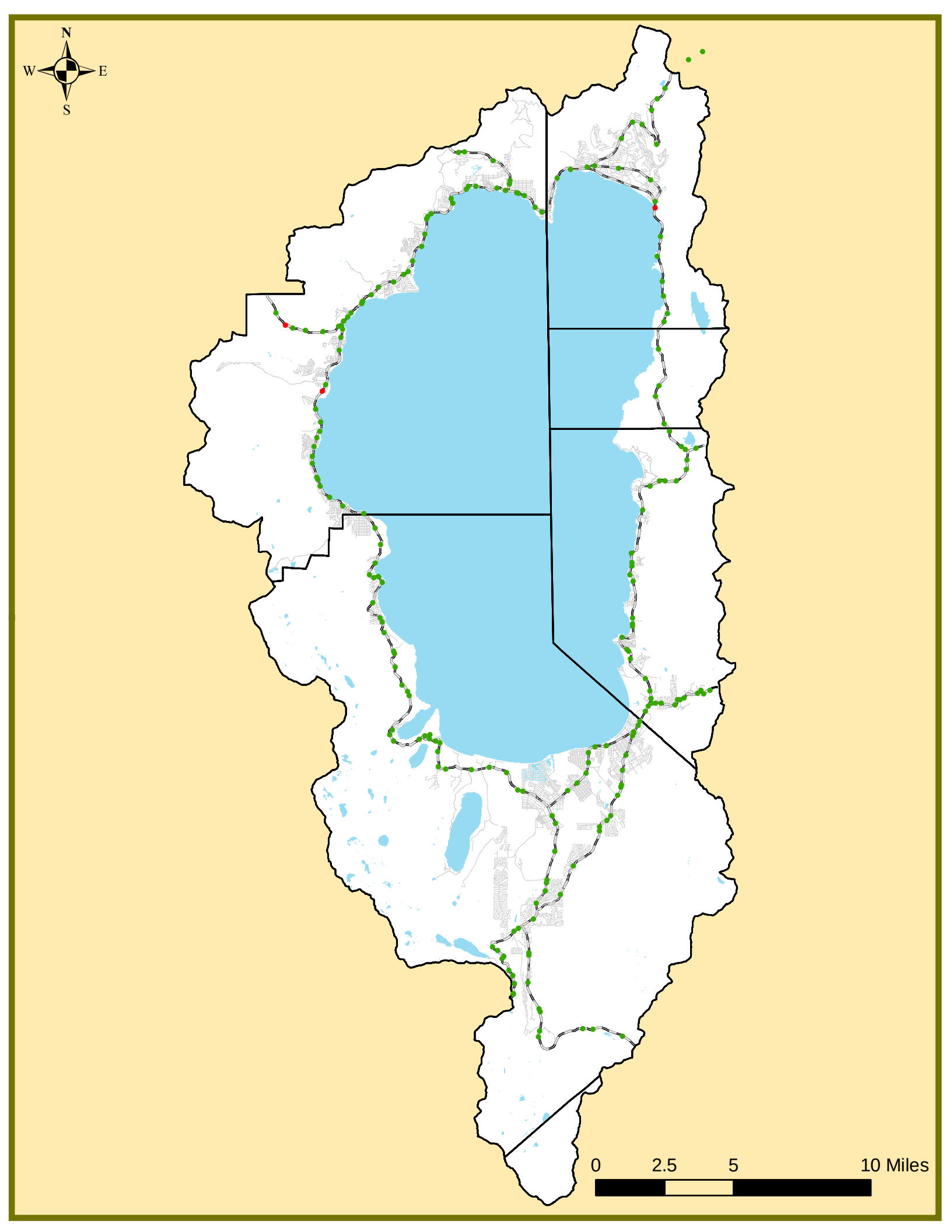
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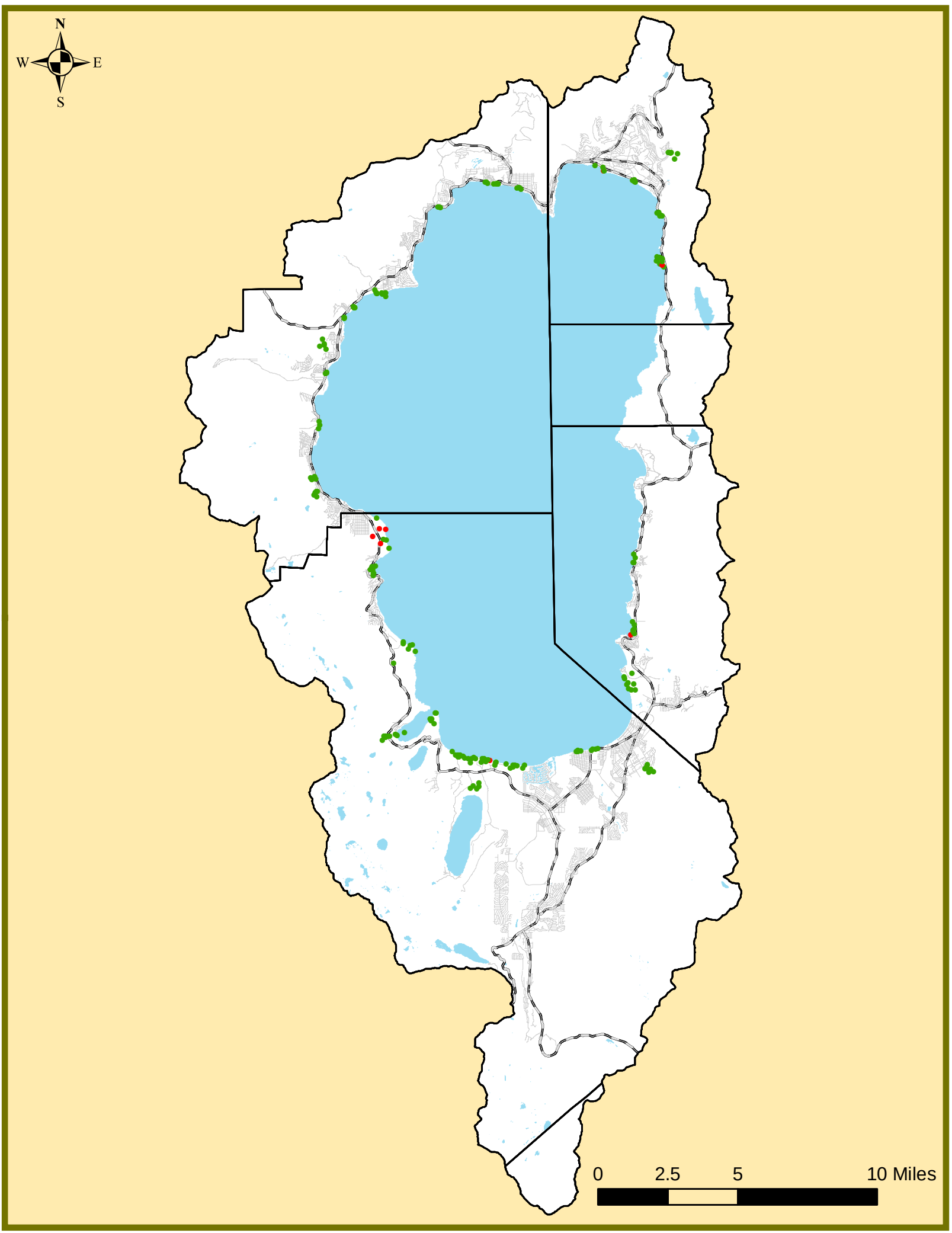
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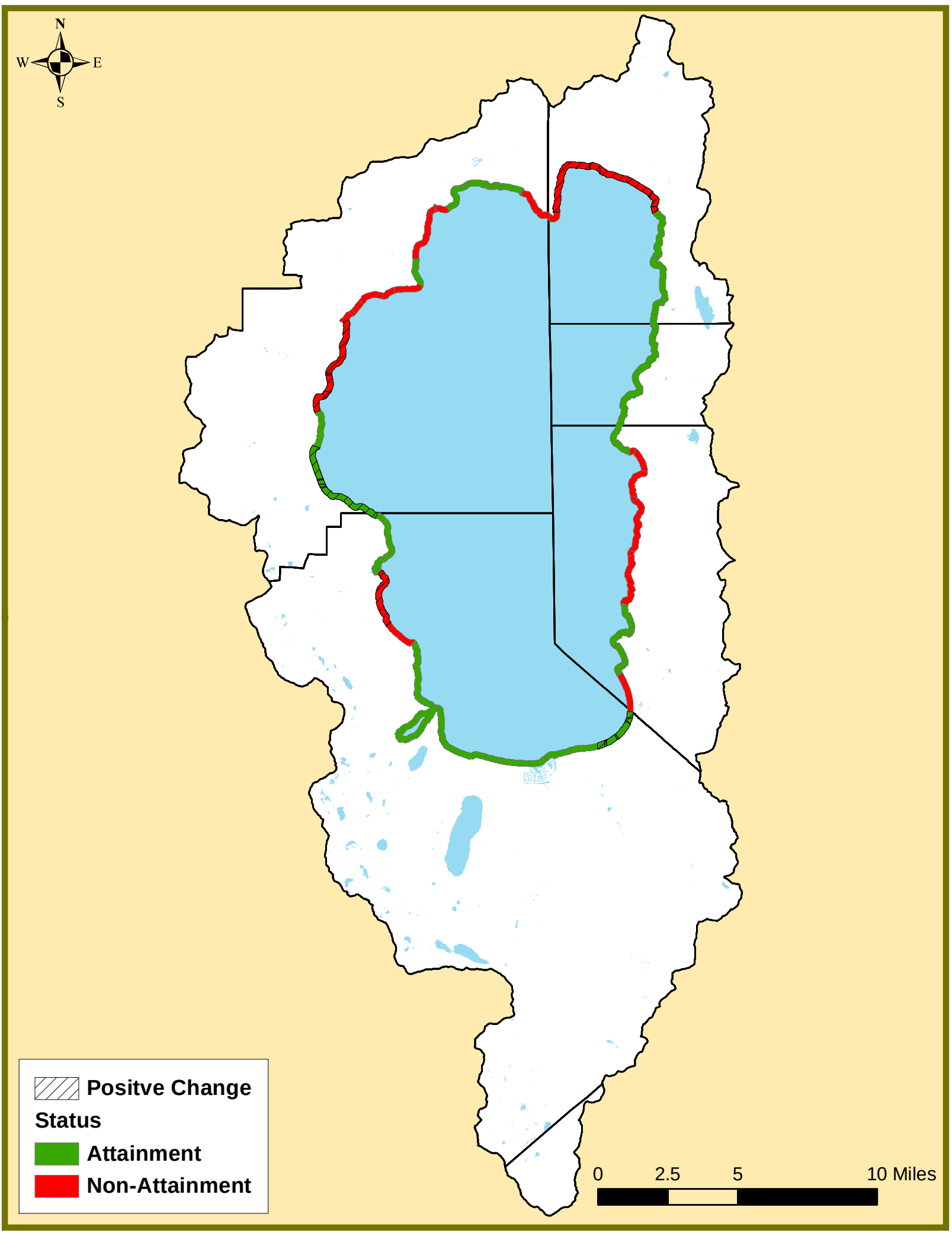
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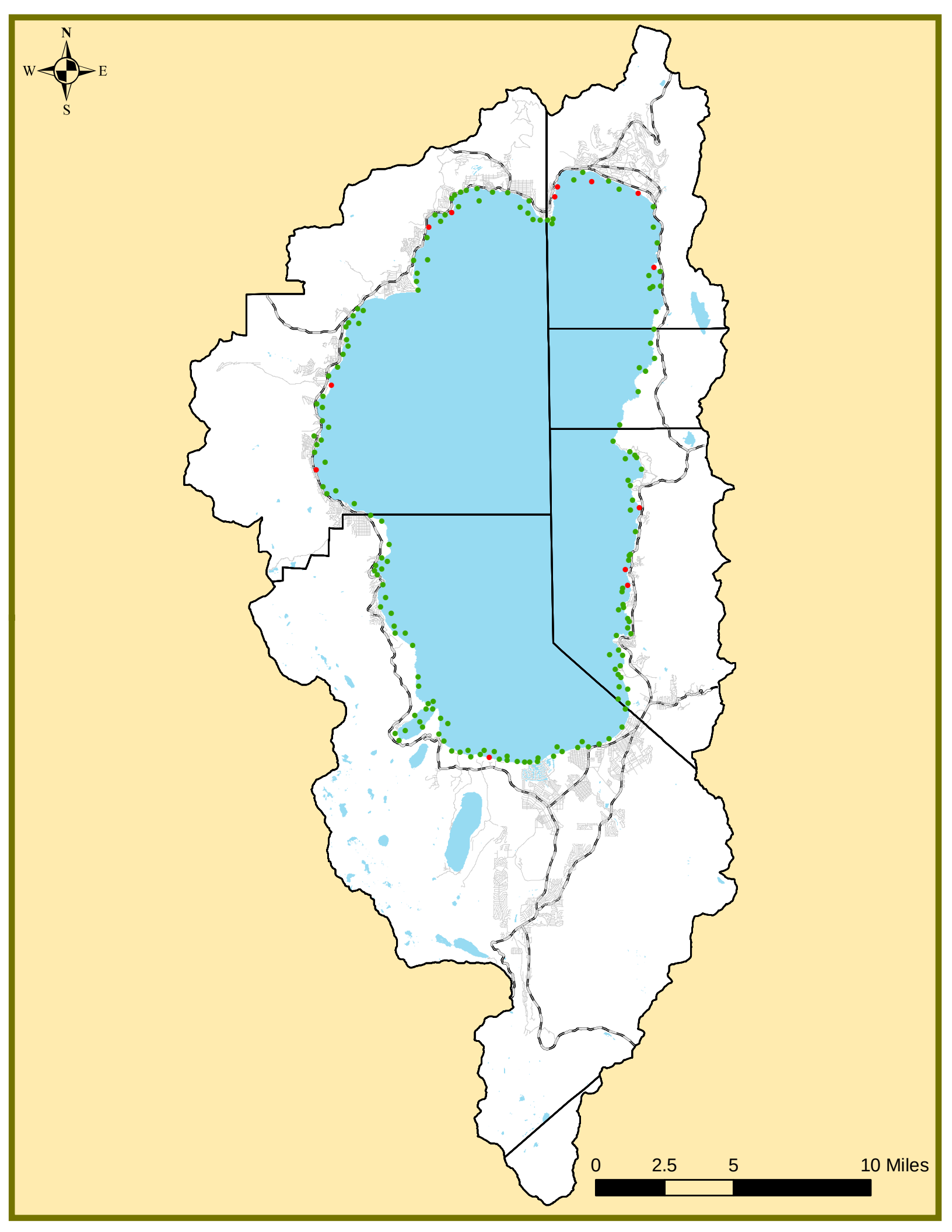
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SCENIC CORRIDORS, RECREATION AREAS & BIKEWAYS

Scenic Corridors

Lake Tahoe
Pioneer Trail
State Route 28
State Route 89
State Route 207
State Route 267
State Route 431
U.S. Highway 50

Scenic Recreation Areas

Agatam Beach
Baldwin Beach Taylor Creek
Burnt Cedar Beach
Camp Richardson
Cave Rock
D.L. Bliss State Park
Diamond Peak
Eagle Falls Picnic Area
Eagle Point Campground
El Dorado Beach and Campground
Fallen Leaf Lake Campground
Granlibakken Ski Resort
Heavenly Valley Ski Resort
Hidden Beach
Incline Beach
Kaspian Recreation Area
Kings Beach State Park
Kiva Picnic Area/Tallac Historic Site
Lake Forest Beach
Lake Forest Campground/Boat Ramp
Meeks Bay Campground
Meeks Bay Resort
Moon Dunes Beach
Nevada Beach
Patton Beach
Pope Beach
Reagan Beach
Sand Harbor
Ski Homewood/Tahoe Ski Bowl
Sugar Pine Point State Park
Tahoe City Commons Beach
Tahoe State Recreation Area
Vikingsholm, Emerald Bay Picnic Area
William Kent Beach & Campground
Zephyr Cove

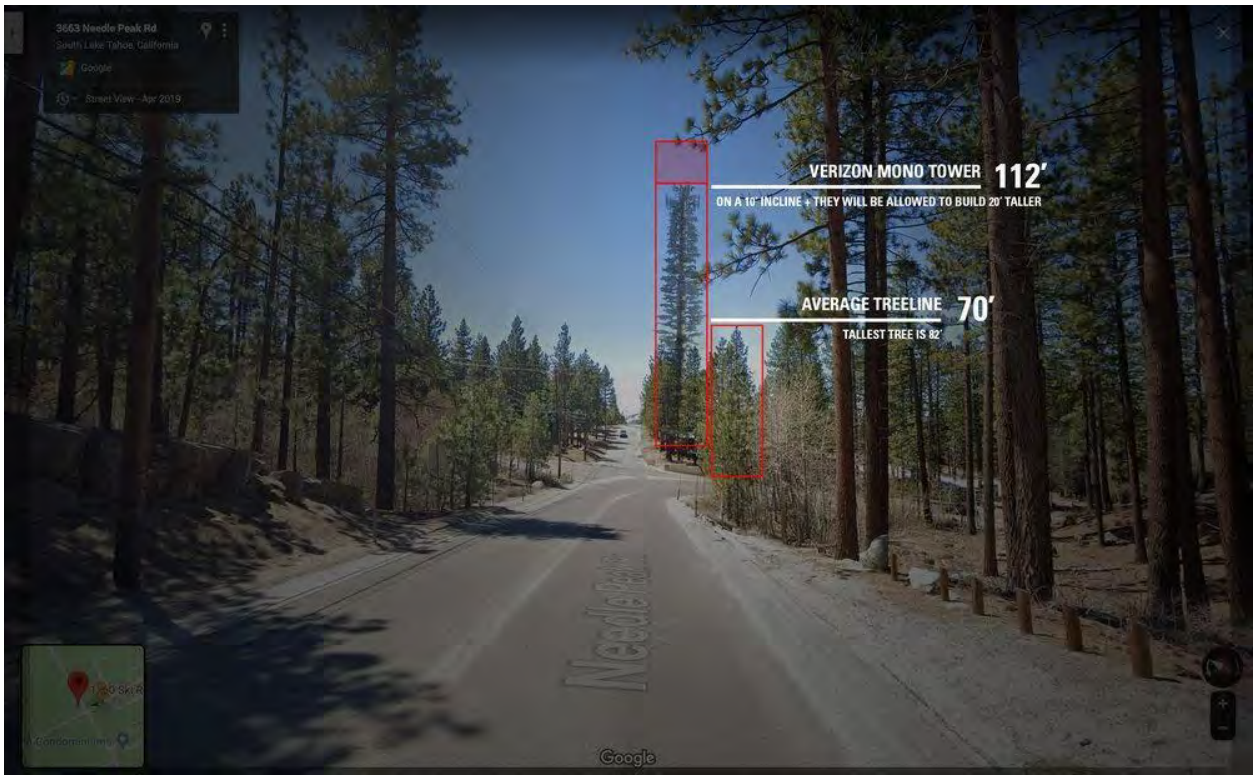
Bikeway Segments

Al Tahoe Boulevard
City of SLT Recreation Area
City of SLT to Tallac Creek
Sunnyside to Timberland
Tahoe City to Dollar Point
Tahoe City to River Ranch
Tahoe Pines to Tahoma
Tahoe Tavern
Tahoe Valley Route
Tahoe Valley to SLT City Limits
Timberland to Tahoe Pines

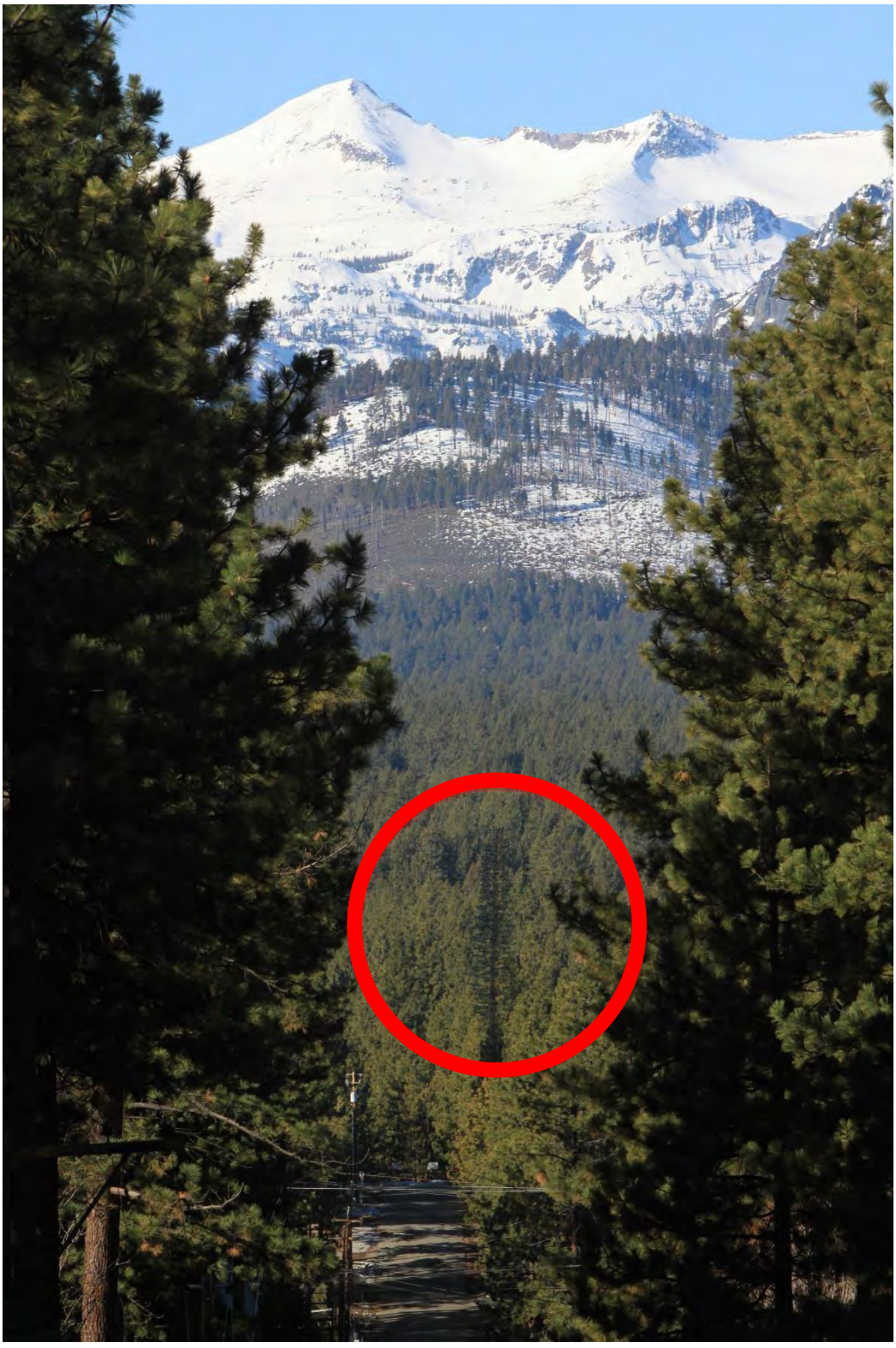
Visual Impact on Scenic Parkway

The Needle Peak Road-Ski Run Blvd. route is the designated parkway connecting tourist traffic from the TRPA designated Pioneer Trail “Scenic Corridor” to the world destination Heavenly Valley Ski Resort “Scenic Recreation Area.” The aspen grove that tangentially crosses Upper Ski Run Blvd., is a heavy scenic attraction during the fall. Visitors regularly turnout here to take souvenir photographs.

The proposal would deforest the above scenic turn of 13 trees, replacing them with a 112-foot tower.



The entire length of Needle Peak Road is directionally aligned to its spectacular allusion, the iconic “needle tipped” Pyramid Peak—for which congress created the federal Desolation Wilderness. Traffic departing Heavenly Valley Ski Resort “Scenic Recreation Area” enjoys this view on the return to Pioneer Trail “Scenic Corridor.” The tower also would be visible from the yards of many cabins along this road.



The spectacular Bijou Park Creek aspen grove runs along the right side of Ski Run Boulevard and crosses the street at the intersection with Needle Peak Road.

The Tower site parcel is marked by the red trapezoid. Thirteen of these pine trees are to be cut down to install one 112-foot tall monopole cell tower along this scenic drive. The heat generated by the antenna panels would conspicuously melt snow flocking the surrounding trees, an unnatural change in the view.

The Aspen Grove is a fall destination for tourists. A 12-story structure would ruin its photographic appeal. The tower could be especially visible in the winter after the aspen loses its foliage.

Locations like the Aspen Grove are used for wedding photographs. Quaking aspen (*Populus tremuloides*) forests are typically single living organisms having one massive underground root system, making them particularly vulnerable to deleterious environmental encroachments.

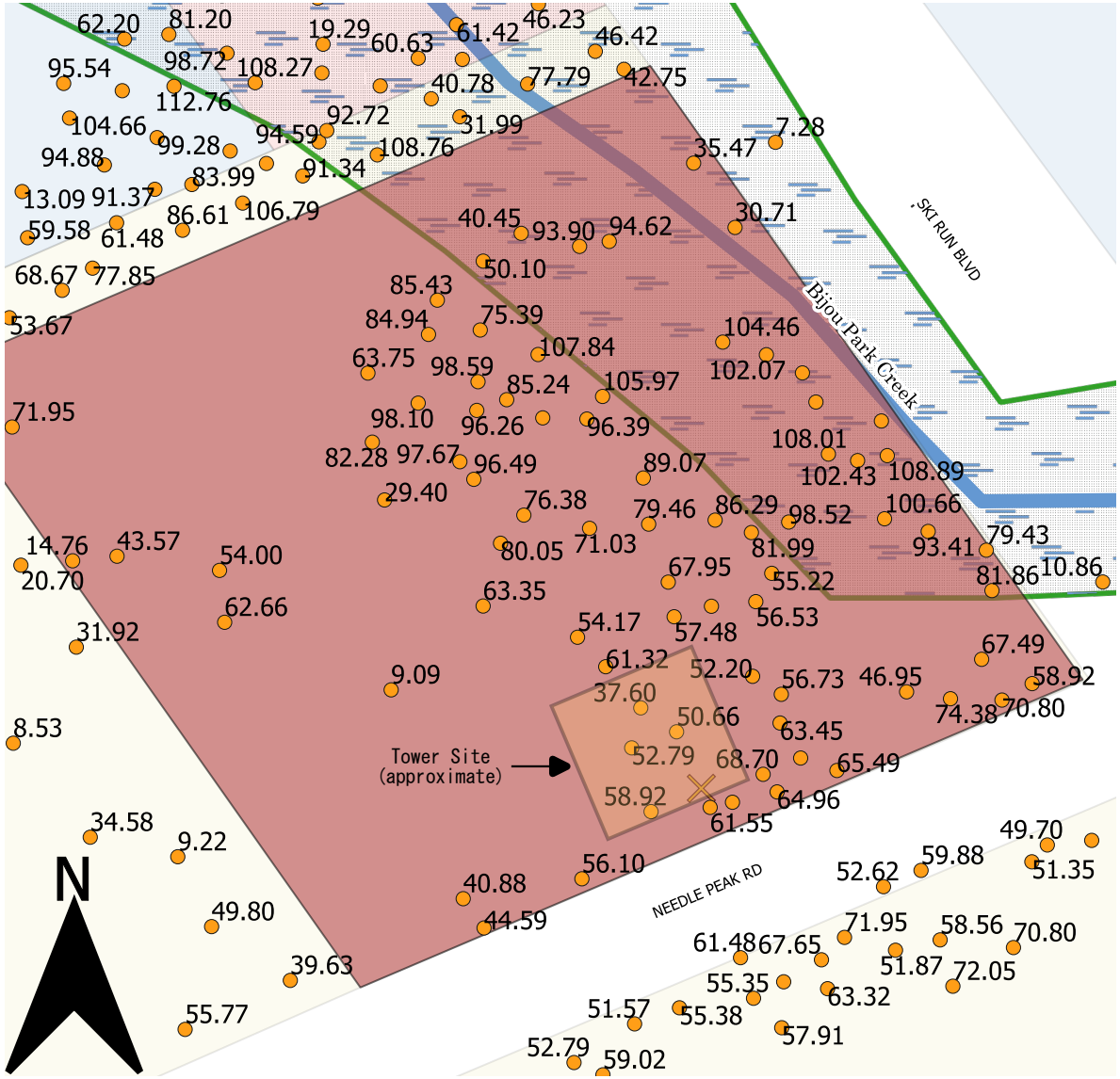
Tourists also stop for the abundant wildlife viewing as well. The riparian habitat along Upper Bijou Park Creek attracts rodents, bears, hawks, and eagles. This photograph of a federally protected osprey was taken less than 500 feet away from the proposed tower site. Eagles rest in the tallest trees in order to swoop down upon prey perched in shorter trees below. By mimicking their habitat, the proposed tower invites these protected birds into the harmful near-field radiation of the antenna.


1389 Ski Run Blvd
South Lake Tahoe, California
Google
Street View - Apr 2019
VERIZON MONO TOWER 112'
ON A 10' INCLINE + THEY WILL BE ALLOWED TO GO TO 120"
AVERAGE TREELINE 65'
TALLEST TREE IS 75'
1360 Ski Ru
Condominiums
Google
Image capture: Apr 2019 © 2019 Google United States Terms Report a problem


3609 Needle Peak Rd
South Lake Tahoe, California
Google
Street View - Jun 2017
VERIZON MONO TOWER 112'
ON A 10' INCLINE + THEY WILL BE ALLOWED TO GO TO 120'
AVERAGE TREELINE 65'
TALLEST TREE IS 75'
Needle Peak Rd
1360 Ski R
Condominiums
Google
Image capture: Jun 2017 © 2019 Google United States Terms Report a problem


VERIZON MONO TOWER 112′
ON A 10° INCLINE + THEY WILL BE ALLOWED TO BUILD 20′ TALLER
AVERAGE TREELINE 65′
TALLEST TREE IS 82′
Google

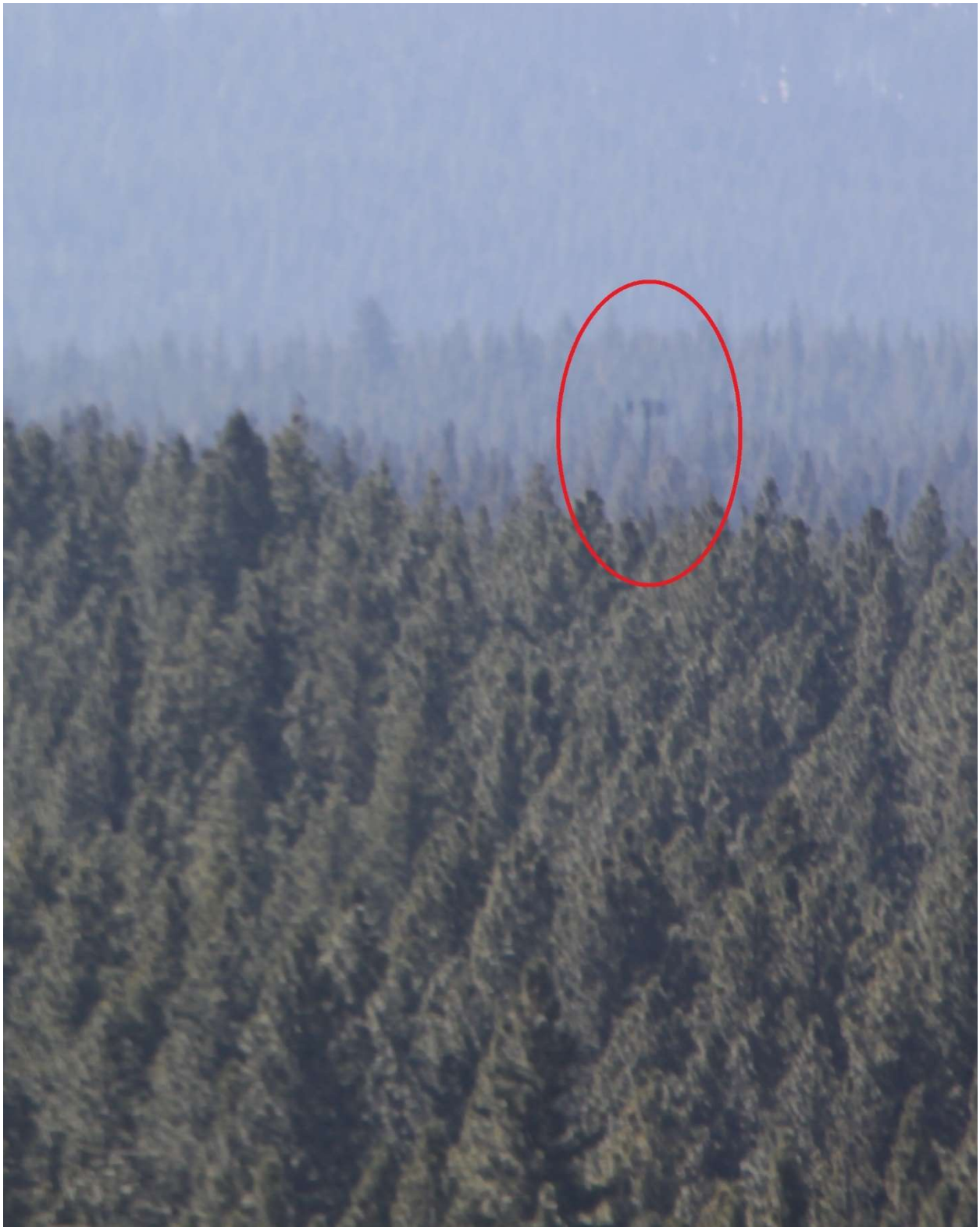
Visual Impact of Proposed 112-Foot Tall Ski Run Cell Tower with 20-Foot Co-location



Tree locations and their respective heights in vicinity to the proposed tower site. Numbers denote height in feet. The proposed tower will be 112 feet tall, and the leassor plans to extended the tower an additional 20 feet for co-locations which must be allowed under 47 U.S.C. § 1455(a). The adjacent trees are generally 60' tall which means the tower will extend 70' above the forest canopy. The tower site is on a ridge which adds substantially to the height differential of all downhill trees.

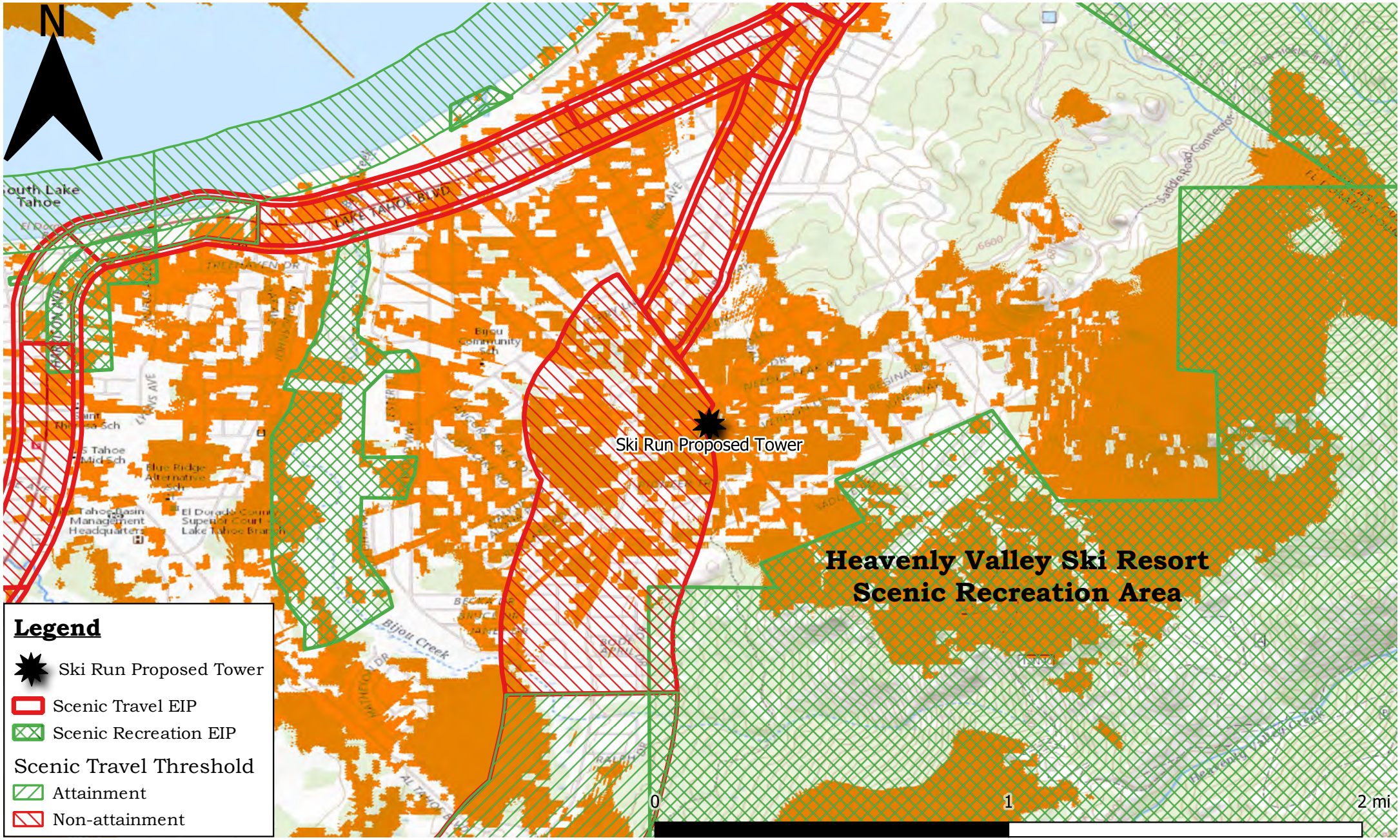
Photo-simulation of tower as viewed from the top of Harrah's Casino on U.S. 50 "Scenic Corridor."

Photo-simulation of tower as viewed from Gondola Observation Deck, within Heavenly Ski Area "Recreational Scenic Zone."



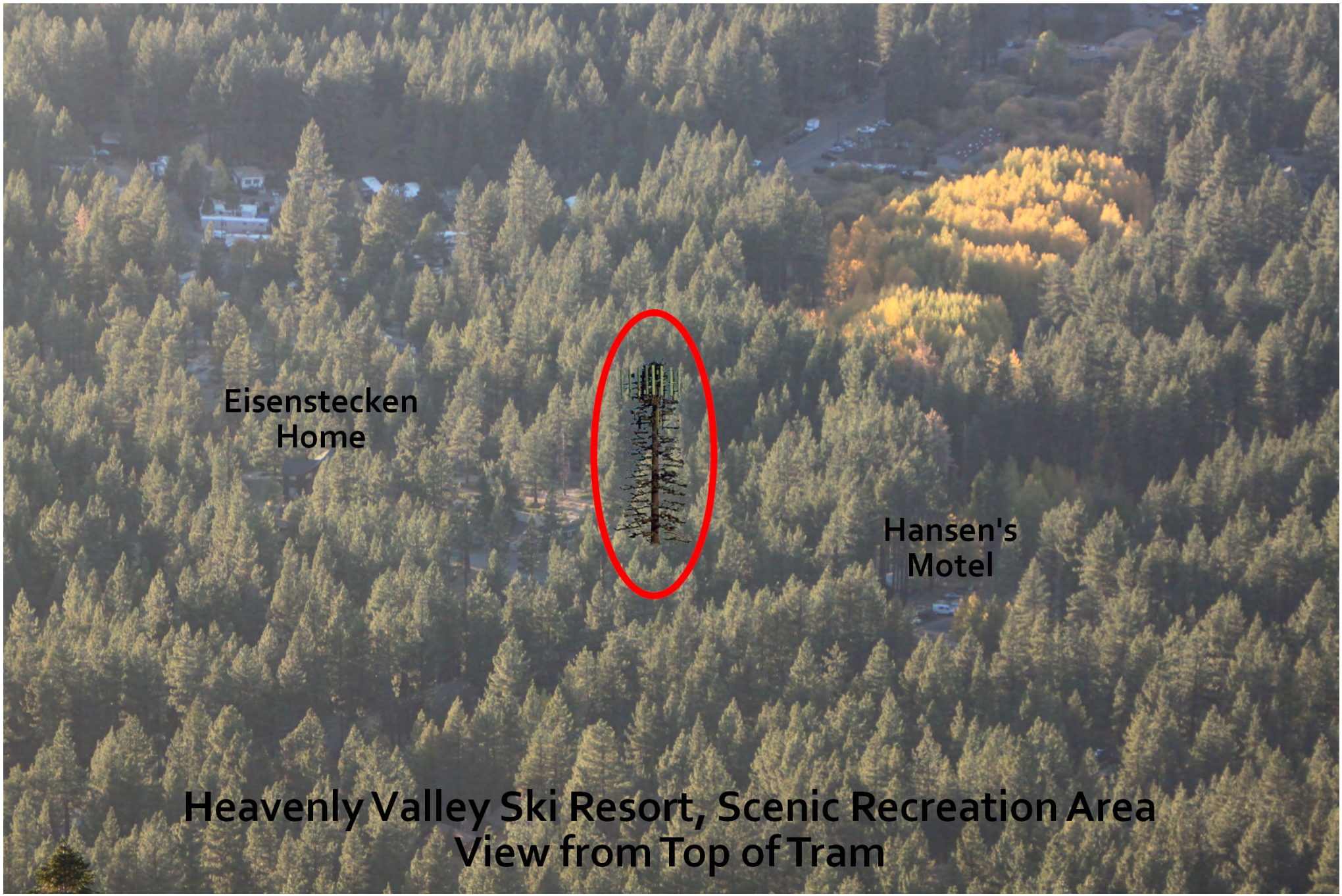
In South Lake Tahoe, a 2005 Verizon Macro Cell Tower can be seen from Stateline Casinos nearly two-and-a-half miles away. If the tower were a “monopine,” design, it would require unnaturally long branches and a 10-foot “topper” which would paradoxically increase the silhouette by a substantial amount. This profile with an additional 47 U.S.C. § 1455(a) 20 foot co-location would extend to the top of the red oval. The closer proposed Ski Run Tower a mile-and-a-half away would be substantially more visible from the casinos. The “monopine” design may decrease discernibility at short range, but in creating a gargantuan “species” outlier in an otherwise homogeneous forest, it increases visibility at long range. It is harder to see a treetop (crown) from the very base of a tall tree.

Proposed Antenna Viewshed & Scenic Environmental Improvement Areas



The proposed Antenna would be visible from sienna colored areas, including from the TRPA designated "Heavenly Valley Ski Resort Scenic Recreation Area" and would potentially be visible from State Scenic Highway U.S. 50 (CA Street and Highway Code § 263.4(c)) as well as TRPA designated travel coridors and improvement programs, and hence will adversely affect scenic environmental quality which expressly disqualifies it from categorical exemption under state regulation (14 C.C.R. § 15300.2(d)). Lake Tahoe is an area of statewide importance as well as national importance (14 C.C.R. §§ 15125(d), 15206(b)(4)(A); E.O. 13057).

Proposed Antenna will spoil view from the TRPA-designated Heavenly Valley Ski Resort <u>Scenic Recreation Area</u>



Angel's Roost Macro Tower & Lakeview Heights Small Cell

Angel's Roost Macro Tower antennas with faux plastic needles.

West Facing antenna array directly points at city center.

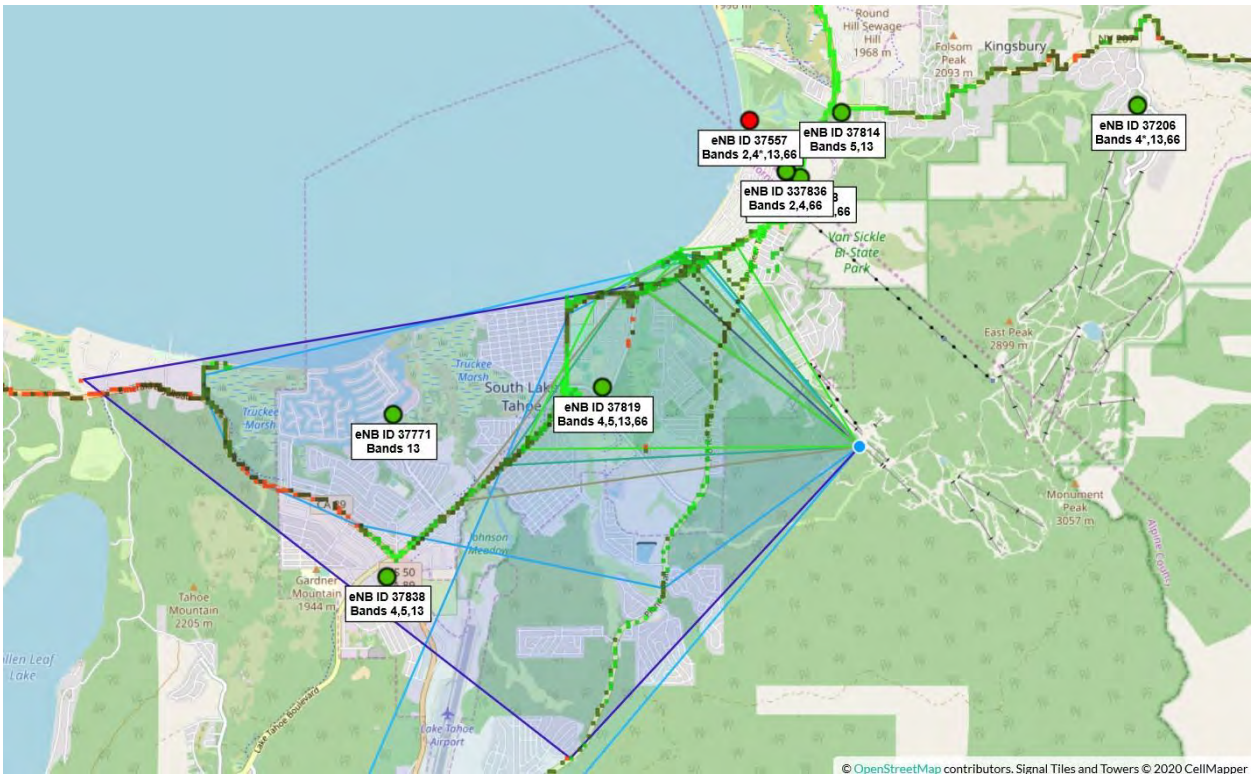
In the Ski Run Macro Tower application & appeal, Verizon lied to City of South Lake Tahoe Officials that: (1) Angel's Roost was entirely facing towards Monument Peak to service the Heavenly Ski Resort; (2) the panels couldn't face downward towards the City because of interference with the lake water—the elevation difference and the lake actually improve signal quality; (3) the monopine design was environmentally friendly.

Nylon faux needles rapidly degrade into microplastics, which wash into protected Lake Tahoe.

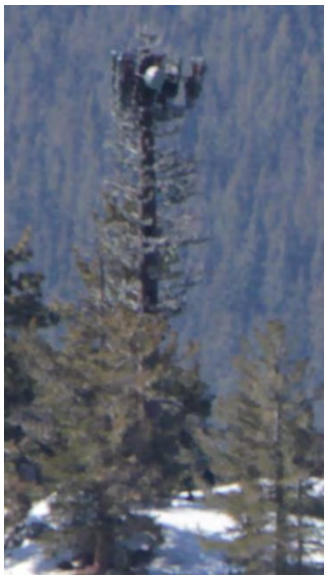
Lakeview Heights Small Cell with Angel's Roost in the background (circled). All of the Angels Roost antennas face down upon the City of South Lake Tahoe.

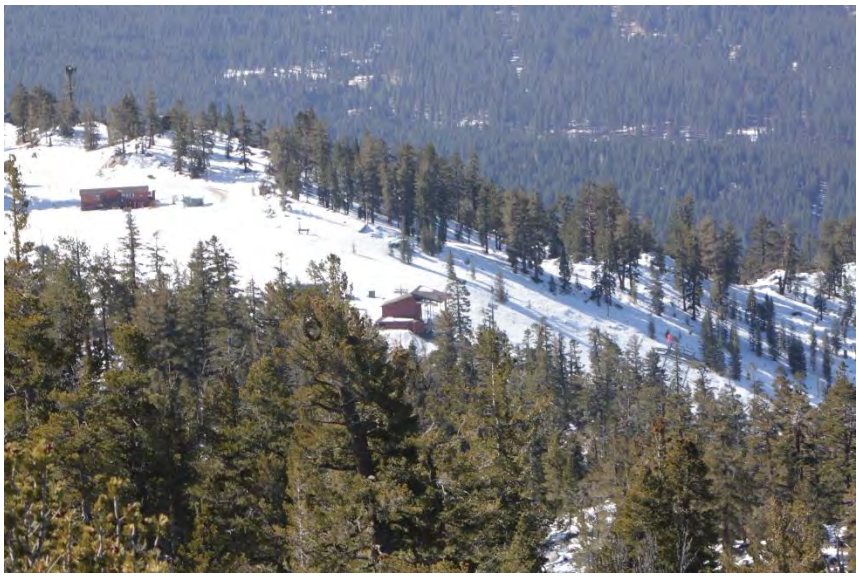
***Prima facie* evidence that the Angel's Roost Tower services the City of South Lake Tahoe**

The Angel's Roost macro cell tower has a large array of panels which are oriented to provide service to the town below. Macro cell towers have a powerful broadcast radius potential of 30 km (18.5 mi), greater than the width of Lake Tahoe; the alleged "significant gap" is a mile away.

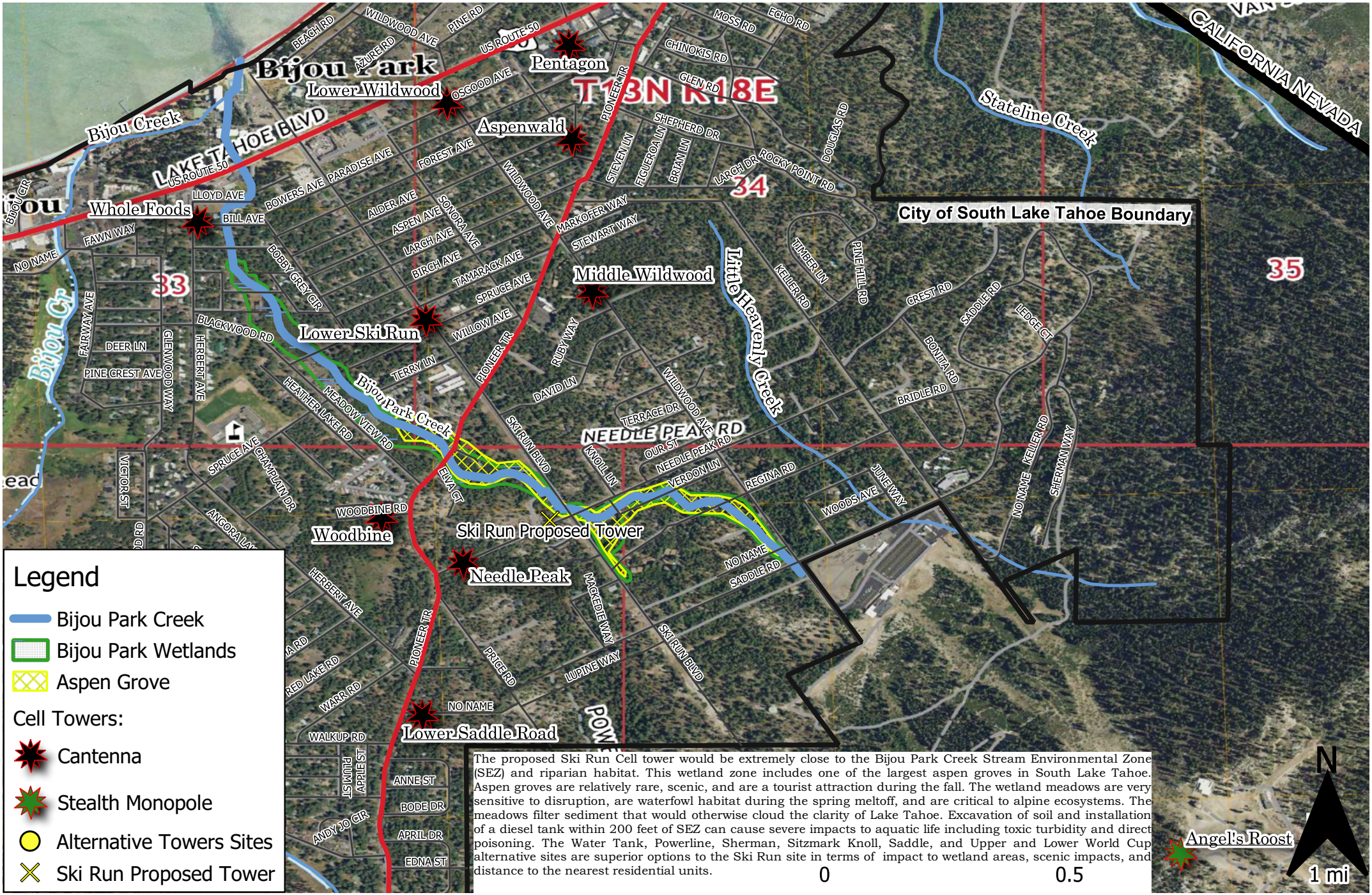


It is also evident by direct inspection of the Angel's Roost cell facility, that its antenna panel arrays are directly pointed both northward and southwestward at the City of South Lake Tahoe. Verizon purported in its permit application to the city that the tower could only service the top of the seasonal ski resort, evidencing a "coverage gap," and hence the necessity of the Ski Run site.



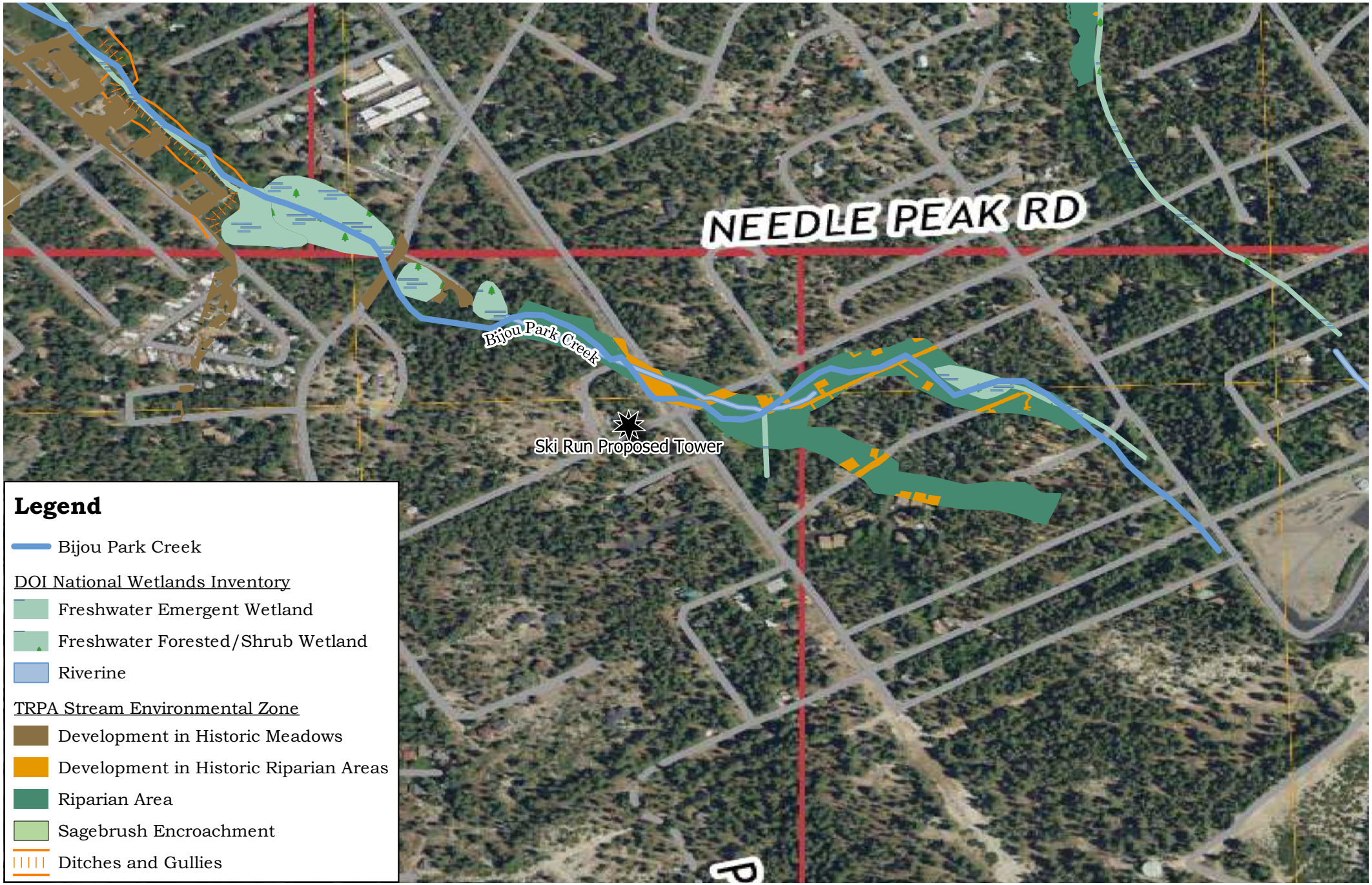


Proposed Tower is Adjacent to Stream Environmental Zone (SEZ)

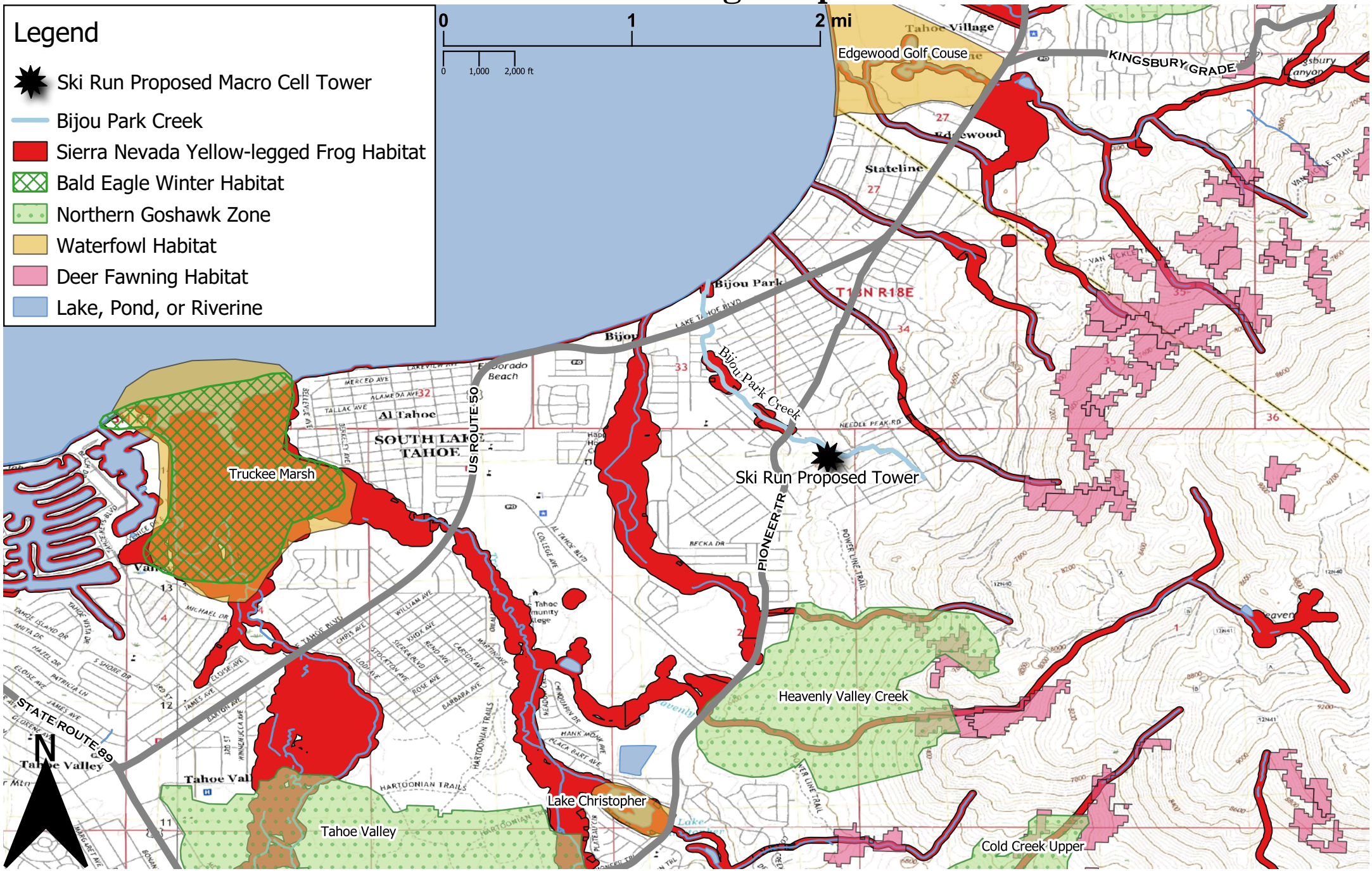


Bijou Park Creek Wetlands

TRPA SEZ vs DOI NWI

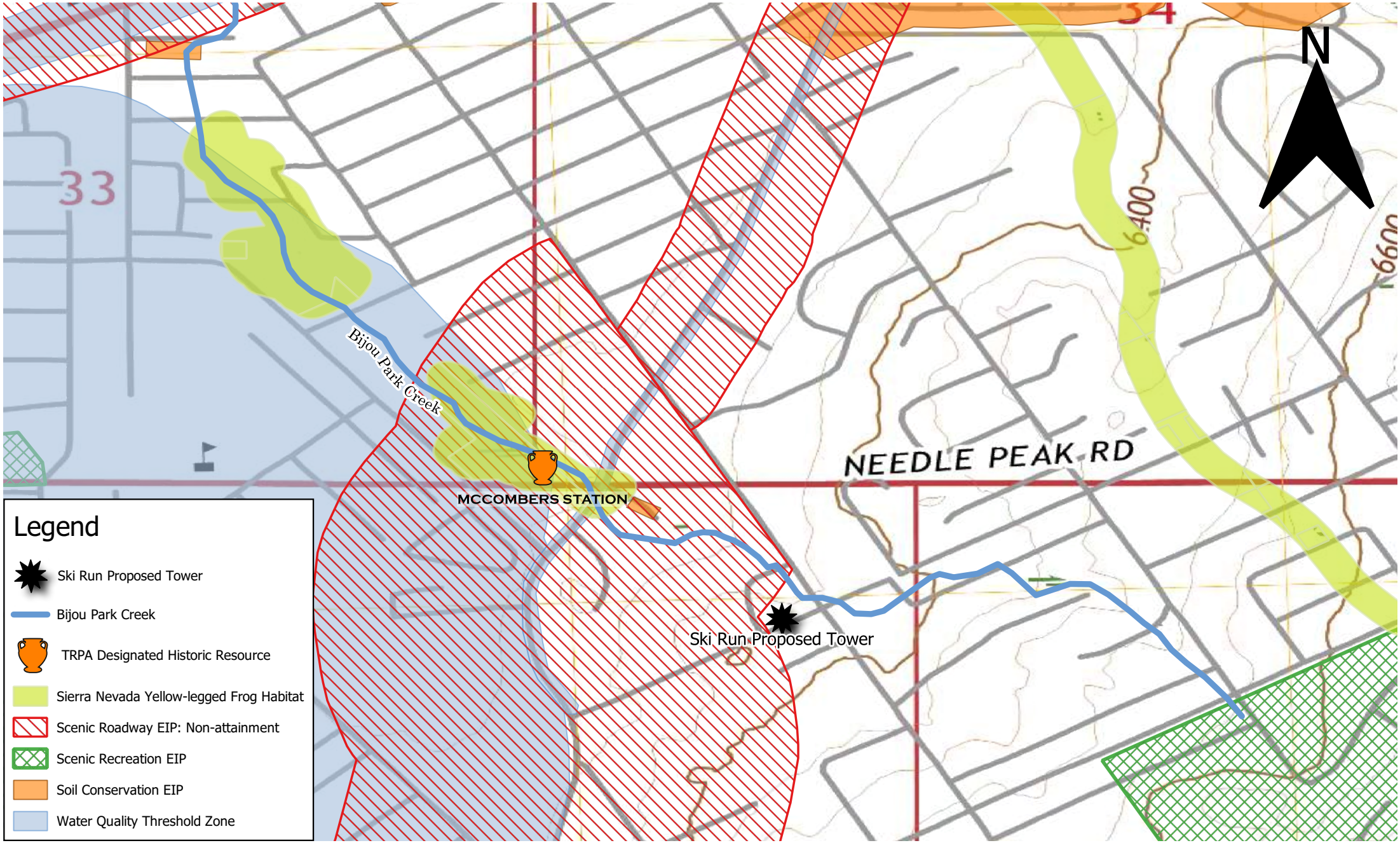


Known Endangered, Threatened, Likely Candidate, and Sensitive Species Suitable Habitat Surrounding Proposed Antenna Site



Data Source: Tahoe Regional Planning Agency, https://www.tahoeopendata.org.
This data may be interactively explored at the TRPA Wildlife ArcGIS Online Map Viewer:
http://www.arcgis.com/home/webmap/viewer.html?url=https%3A%2F%2Fmaps.trpa.org%2Fserver%2Frest%2Fservices%2FDatadownloader_Wildlife%2FMapServer&source=sd.
See also: TRPA Tahoe Stream Environmental Zone (SEZ) Viewer: https://gis.trpa.org/tahoesezviewer.

Applicant Neglected to Report Environmental and Cultural Resources



The NEPA Review performed by EBI Consulting on behalf of their client Verizon, omits the above sensitive environmental and cultural areas, as well as improvement (EIP) zones. In exercise of due diligence, this data ought to have been obtained by conferring with the local USFS field office and the Tahoe Regional Planning Agency.

Constructing a 112-foot cell tower in a residential area is no minor project

Governments, like people, can make mistakes. The government is not always right, and the mistake does not have to be intentional.

When officials err, as we all do at times, elected officials and their executives need to take corrective action as soon as possible. Most elected leaders want to do what is right, but they are not always provided with the right advice.

People who elect their representatives to the City Council want their elected leaders to look out for their health, safety and welfare and protect their property rights and not cave to powerful corporate interests on land use matters.

Approval of a 112-foot cell tower at 1360 Ski Run Boulevard and Needle Peak Road is bad policy, bad planning and based on bad advice.

Yes, we all want improved cell phone service. This can be achieved without degrading residential neighborhoods.

Here are a few thoughts based on my experience in local government.

1. General Plan — A 112-foot commercial cell tower in a residential area is not consistent with the characteristics of a residential area in the city's adopted General Plan. It is not a residential use, and it detracts from the characteristics of a residential area. When Verizon Wireless first applied for a permit to build the tower, city staff should have told them to find another location.

2. Could you build one? — No one living in a residential area could build a 112-foot-tall structure whether commercial or residential. While the FCC does limit the city's zoning authority to consider health effects, city council still can, and must, consider conventional aesthetic factors.

3. Environmentally exempt? – Nowhere in the city codes can I find a specific exemption from environmental review for a 112-foot tall cell tower, yet city staff allowed the commercial project to be processed without even an environmental assessment. An environmental assessment would have evaluated the possible impacts of the tower on the area and identified the long-term proposed use of the tower (i.e. what add-on cell facilities are expected in the future).

4. General Plan must be followed under state law — No cell tower ordinance was needed to do the basic work required on this project that planners are supposed to do. All that was needed was to follow the city's adopted General Plan, the "constitution" for all development. Yes, I support a comprehensive cell tower ordinance now, but at Ski Run/Needle Peak the proverbial "horse is already out of the barn," and the people who suffer are those people who live in the area, not the officials and staff who approved it.

5. Policy makers not given good advice — The planning commission and city council were not made aware of their options to further evaluate or deny the project when it was first brought to them.

6. Evidence not given fair consideration — The appeal of the planning commission's decision to approve the tower was then mishandled at the council level with the abundance of evidence submitted by the appellant and hundreds of people were apparently overlooked by the city council majority. The council majority was placed in a box by their staff and told they could go no farther to provide relief. The recommendation was nonsense.

There were at least two alternative sites that would be appropriate and available to close the alleged gap in cell coverage that a tower would close. Verizon has not demonstrated that those sites are infeasible, only that this site is easier for them.

7. Appeal hearing missteps — The appeal hearing was conducted in a poor manner that violated the appellant's due process rights and the city's written appeal hearing protocols. (a) The appellant was not given equal time to rebut Verizon testimony; (b) city council improperly reduced the time limit at the hearing for public comment from 3 to 2 minutes, and no city executive cautioned the council that such action violated the printed city protocol for appeal hearings.

No vote was taken by council to reduce the time limit; (c) A council member prior to the hearing is reported by a witness to have voiced his opposition to the appeal in a lodging meeting a few days before the hearing and made it clear that he was not a neutral party required under City protocols; and (d) Not all written evidence allegedly opposing the appeal, I am told, was placed in the record and made available to all parties before or at the hearing. Council members were supposed to rely on the hearing and evidence in the record only to make their decision, not hidden pre-hearing messages or communications to them.

The City Council can and should fix this travesty of justice. They can do so if they agree to re-hear the matter, read the volumes of written and verbal testimony opposed to the 112-foot tower and the brief by a prominent New York cell facilities expert lawyer, get sound advice from their staff, and tell powerful and wealthy Verizon corporate people that they have to find a new location if they want to build a tower.

City officials should actively engage top leadership of other public entities to allow the construction of the tower on public lands (i.e, the USFS, CTC).

Verizon advocates stated that the Forest Service (with vast amount of land within the city limits) denied any more permits for cell facilities towers on their lands.

I have written to Vicki Christiansen, Chief of the USFS in Washington D.C., asking for her help to allow a tower on their lands, thus taking city government off the hot seat and providing well-deserved relief to the people who live in the neighborhood.

I communicated as well with Congressman McClintock's Office for support in this regard. If federal, state, and local government officials want 112-foot towers built, put the towers on public lands, not in a residential area.

Finally, Verizon officials could be heroes if they agreed to find another site. But of course, they do not live here, and apparently, they do not care. It sure would be a great gesture if Verizon would help and I would then take back what I just said about them. Would any of you want a 112-foot tower near your house? I doubt it. I don't.

David Jinkens is a South Lake Tahoe resident and former city manager.

Tahoe Daily Tribune

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Classifieds 530-544-9636

Circulation 530-273-9565

Letters to the editor policy

The Tahoe Daily Tribune welcomes your thoughts and opinions in our opinion section. Email editor@tahoedailytribune.com and include the writer's name, hometown and phone number for verification.

- Anonymous submissions will not be published.
- Form letters, absolute letters or letters in poor taste will be rejected.
- We reserve the right to edit all letters and columns.
- Letters must be 300 words or less. Guest columns must be 750 words or less.

Federal Register
Vol. 62, No. 148
Friday, August 1, 1997

Presidential Documents

Title 3—

The President

Executive Order 13057 of July 26, 1997

Federal Actions in the Lake Tahoe Region

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that Federal agency actions protect the extraordinary natural, recreational, and ecological resources in the Lake Tahoe Region (''Region'') (as defined by Public Law 91-148), an area of national concern, it is hereby ordered as follows:

Section 1. *Tahoe Federal Interagency Partnership.*

1-101. The Federal agencies and departments having principal management or jurisdictional authorities in the Lake Tahoe Region are directed to establish a Federal Interagency Partnership on the Lake Tahoe Ecosystem (''Partnership'').

1-102. Members of the Partnership shall include the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of the Army, and the heads of any other Federal agencies operating in the Region that choose to participate. Representation on the Partnership may be delegated. The Partnership shall be chaired by the Secretary of Agriculture for the first year after its establishment. The Chair of the Partnership shall thereafter be rotated among the members on an annual basis.

1-103. The Partnership will:

(a) facilitate coordination of Federal programs, projects, and activities within the Lake Tahoe Region and promotion of consistent policies and strategies to address the Region's environmental and economic concerns;

(b) encourage Federal agencies within the Region to coordinate and share resources and data, avoid unnecessary duplication of Federal efforts, and eliminate inefficiencies in Federal action to the greatest extent feasible;

(c) ensure that Federal agencies closely coordinate with the States of California and Nevada and appropriate tribal or local government entities to facilitate the achievement of desired terrestrial and aquatic ecosystem conditions and the enhancement of recreation, tourism, and other economic opportunities within the Region;

(d) support appropriate regional programs and studies needed to attain environmental threshold standards for water quality, transportation, air quality, vegetation, soils (stream environment zone restoration), wildlife habitat, fish habitat, scenic resources, recreation, and noise;

(e) encourage the development of appropriate public, private, and tribal partnerships for the restoration and management of the Lake Tahoe ecosystem and the health of the local economy;

(f) support appropriate actions to improve the water quality of Lake Tahoe through all appropriate means, including restoration of shorelines, streams, riparian zones, wetlands, and other parts of the watershed; management of uses of the lake; and control of airborne and other sources of contaminants;

(g) encourage the development of appropriate vegetative management actions necessary to attain a healthy Lake Tahoe ecosystem, including a program of revegetation, road maintenance, obliteration, and promotion of forest health;

(h) support appropriate regional transportation and air quality goals, programs, and studies for the Region;

(i) support appropriate fisheries and wildlife habitat restoration programs for the Region, including programs for endangered species and uncommon species;

(j) facilitate coordination of research and monitoring activities for purposes of developing a common natural resources data base and geographic information system capability, in cooperation with appropriate regional and local colleges and universities;

(k) support development of and communication about appropriate recreation plans and programs, appropriate scenic quality improvement programs, and recognition for traditional Washoe tribal uses;

(l) support regional partnership efforts to inform the public of the values of managing the Lake Tahoe Region to achieve environmental and economic goals;

(m) explore opportunities for public involvement in achieving its activities; and

(n) explore opportunities for assisting regional governments in their efforts.

1-104. The Partnership will report back to the President in 90 days on the implementation of the terms of this order.

Sec. 2. *Memorandum of Agreement.*

2-201. The Partnership shall negotiate a Memorandum of Agreement with the States of California and Nevada, the Washoe Tribal Government, the Tahoe Regional Planning Agency, and interested local governments.

2-202. The Memorandum of Agreement shall be designed to facilitate coordination among the parties to the Agreement, and shall document areas of mutual interest and concern and opportunities for cooperation, support, or assistance.

Sec. 3. *General Provisions.*

3-301. The Chair of the Partnership shall advise the President on the implementation of this order. The Chair may recommend other administrative actions that may be taken to improve the coordination of agency actions and decisions whenever such coordination would protect and enhance the Region's natural, ecological, and economic values.

3-302. Nothing in this order shall be construed to limit, delay, or prohibit any agency action that is essential for the protection of public health or safety, for national security, or for the maintenance or rehabilitation of environmental quality within the Region.

3-303. Nothing in this order is intended to create, and this order does not create, any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE,
July 26, 1997.

[FR Doc. 97–20497
Filed 7–31–97; 8:45 am]
Billing code 3195–01–P

State of California

PUBLIC RESOURCES CODE

Section 21084

21084. (a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from this division. In adopting the guidelines, the Secretary of the Natural Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.

(b) A project's greenhouse gas emissions shall not, in and of themselves, be deemed to cause an exemption adopted pursuant to subdivision (a) to be inapplicable if the project complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with Section 15183.5 of Title 14 of the California Code of Regulations.

(c) A project that may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall not be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

(d) A project located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code shall not be exempted from this division pursuant to subdivision (a).

(e) A project that may cause a substantial adverse change in the significance of a historical resource, as specified in Section 21084.1, shall not be exempted from this division pursuant to subdivision (a).

(Amended by Stats. 2013, Ch. 76, Sec. 175. (AB 383) Effective January 1, 2014.)

6.10.190 Scenic highway corridors.

The Lake Tahoe Region offers many outstanding opportunities to view and photograph scenic resources. Many of these opportunities are available while driving around the lake on the main highways (US 50, State Routes 28, 89, 207, 267 and 431, and Pioneer Trail). The highways listed are also travel routes used in TRPA's scenic quality thresholds. Maintaining and in some cases upgrading the scenic quality of the view from the road is the primary goal behind both scenic highway corridors and scenic quality thresholds.

All projects which are within the scenic highway corridors, as defined by the TRPA, of US 50, 89 and Pioneer Trail shall meet design standards listed below. (Note: A scenic corridor is defined as including the street right-of-way and property abutting such right-of-way, a distance of 300 feet.)

1. Standard: All new electrical lines which operate at 32 kilovolts or less, including service connection lines, shall be placed underground. Exceptions to this requirement will be based on the city finding that undergrounding would produce a greater environmental impact than above-ground installation. When new electrical lines are permitted to be installed above ground, the new lines, poles and hardware shall be screened from view of the scenic highway to the maximum extent possible.

2. Standard: All new communication lines including telephone lines, cable television lines, and service connection lines shall be placed under- ground. Exceptions to this requirement will be based on the city finding that undergrounding would produce a greater environmental impact than above-ground installation. When new communication lines are permitted to be installed above ground, the new lines, poles, and hardware shall be screened from view of the scenic highway to the maximum extent possible.

3. Standard: See also standards for street right-of-way improvements.

4. Standard: TRPA Code Section 30.13 development standards for rural transitional corridors shall apply to the applicable sections of Pioneer Trail. (Ord. 903. Code 1997 § 5-28)

6.50.010 Purpose of regulations controlling tree removal.

In enacting the following sections, the city council finds that the city is situated in a scenic mountain forest area with a reputation as a restful resort community whose economic well-being is primarily dependent upon the attraction of tourists from all parts of the world, that by reason of the rapid growth of the city, certain property owners have cut down great numbers of trees within the city without regard to the beauty of the area, that many lots have been left in an unsightly condition by reason of tree stumps being left visible above ground level, that as a result of such wanton cutting of trees and leaving of stumps much adverse publicity has been received by the city which has adversely affected its image as a tourist attraction with a resultant adverse effect upon the city's economic well-being; that such adverse publicity will continue unless the cutting of trees within the city is strictly controlled, and that the leaving of slash, debris and felled trees or tree parts creates breeding sites for insects which can infest standing trees.

Therefore, the provisions of the following sections are intended to limit the unnecessary destruction of existing trees on private and public property so as to preserve the natural beauty for which this area is so famed and thus to preserve and protect the prosperity, general welfare and economic well-being of the city and its inhabitants, while at the same recognizing individual rights to develop private and public property in a manner which will not be prejudicial to the public interest. (Ord. 62 § 1; Ord. 193 § 1. Code 1997 § 29-1)

6.50.020 Permits to destroy trees – Required.

No person shall cut down, destroy, remove or move any tree with a trunk diameter of six inches or greater, measured 24 inches above the ground, growing within the city, unless a permit so to do has been obtained from the city manager or his designated representative. (Ord. 62 § 1. Code 1997 § 29-2)

6.50.030 Permits to destroy trees – Application, inspection of premises.

Application for a permit for the removal of a tree shall be made to the city manager in such form and detail as he shall prescribe.

Upon receiving any such application, the city manager or his designated representative shall inspect the premises involved, and the surrounding area, and shall ascertain whether or not the trees can be preserved while permitting a logical and reasonable development of the property in accordance with applicable zoning laws. (Ord. 62 § 1. Code 1997 § 29-3)

6.50.040 Permits to destroy trees – Issuance or denial – Appeals.

A. Following investigation, a permit for the removal of a tree shall be issued, unless the city manager shall find that any such tree is in a reasonably healthy condition and can be preserved while permitting a logical and reasonable development of the property in accordance with applicable zoning laws, or that the public interest will be otherwise unduly prejudiced by the destruction or removal of any such tree, and that the public interest in preservation of any such tree is not outweighed by the individual hardship on the applicant in the event the application is denied. In applying such standards, nothing shall be deemed to prevent the city manager or his

designated representative from issuing a permit to destroy or remove part of the trees involved in an application, while denying a permit as to the remainder. As to any permit denied, the city manager shall set forth, in writing, the reasons for the denial.

B. Notwithstanding the provisions of subsection (A) of this section, in any case where the city manager or his designated representative is unable to make the necessary findings as prescribed therein, but does find that it would be otherwise desirable in the public interest that any tree involved in an application be preserved, then in such event the permit may be withheld for a period not to exceed 20 days, during which time the matter may be referred to the city council for consideration of providing compensation to the land owner involved in return for continued preservation and maintenance of the tree.

C. Any person aggrieved by any action of the city manager or his designated representative in denying or issuing any such permit may appeal pursuant to Chapter 2.35 SLTCC. (Ord. 62 § 1; Ord. 1105 § 1 (Exh. B). Code 1997 § 29-4)

6.50.110 Purpose of article.

It is for the best interests of the city and of the citizens and public thereof that a comprehensive plan for the planting and maintenance of trees in city streets should be developed and established, and this article is adopted for the purpose of developing and providing for such a plan and program, and for the purpose of establishing rules and regulations relating to the planting, care and maintenance of such trees. (Ord. 37 § 4. Code 1997 § 29-10)

6.50.180 Appeals.

Any person aggrieved by any act or determination of the director of public works in the exercise of the authority granted in this article may appeal said decision pursuant to Chapter 2.35 SLTCC. (Ord. 37 § 4; Ord. 1105 § 1 (Exh. B). Code 1997 § 29-17)

6.10.090 Purpose – Intent – Applicability.

A. Purpose. The scenic beauty of the Lake Tahoe Region has been recognized as a national treasure through many eyes, including those of the U.S. Congress. The visual quality of the natural landscape is the primary contributor. National treasure status has afforded the region unparalleled stewardship. The concept of stewardship carries through to the design and development of the built environment and the way it fits into the natural setting becomes critical. This Manual of Design Standards and Guidelines represents a concerted effort to keep this area a national treasure while accommodating the sensitive development and use of land.

B. The Intent. The city-wide design standards relate to the aesthetic considerations of project development. There are other codes, i.e., the Plan Area Statements and Other Land Use Regulations or the TRPA Code, that will outline the parameters which you are entitled to use in developing your property. These standards will tell you how to aesthetically and sensitively refine those parameters into a project that will fit into the natural setting.

C. Applicability. For the city of South Lake Tahoe, the standards presented in this document replace the "South Lake Tahoe Design Guide," April 20, 1971, as well as the TRPA design standards and guidelines contained within the TRPA Code of Ordinances, Chapter 30, or as may be amended.

In general, the standards contained in this chapter are to be applied to new construction, major remodeling, more specifically:

1. All newly constructed or exterior remodeled buildings or structures proposed for any use other than single-family residential units.

2. Newly constructed or exterior remodeled residential units or structures which are located within 200 feet of the high water line of the lake.

3. All prefabricated or factory-built buildings or structures.

4. All existing buildings or structures to be relocated within the city, regardless of proposed use.

5. Any structure proposed or located within a flood plain as defined within the City Code.

6. New or modified parking areas containing four or more parking spaces.

7. Other proposals without buildings or structures which may potentially affect the general appearance of the city, including public projects, such as erosion control projects.

a. Exceptions. The above projects are required to comply with all the design standards contained within this chapter as a part of their project approval, with the following exceptions:

i. Projects for which the cost of public improvements may be prohibitive, based on a case-by-case

review, may submit schedules for compliance. Depending on the magnitude of the improvements, the maximum schedule for completion shall be five years.

ii. Projects which are in assessment districts (or are contained in approved public works projects) which are committed to implement the public improvements.

iii. Projects for which the city has found the standard not to be applicable as a result of the city variance process (SLTCC 6.55.620). The city shall consult with the TRPA regarding exceptions and required TRPA findings, including those which may affect the scenic thresholds on Highway 50, 89 and Pioneer Trail. (Note: the TRPA cannot approve a variance to a scenic threshold if it affects the scenic threshold rating).

iv. Exterior remodeled structures shall only be required to comply with those standards which are directly affected by the construction.

v. Modifications to driveway width and placement requirements may be made for industrial projects where large truck maneuvers require wider driveways in order to provide safe turning maneuvers and adequate circulation. Evidence provided by a licensed traffic engineer shall demonstrate the need for the exception and that the exception will improve safety and circulation.

b. Approval Process. All projects subject to review shall be submitted to the planning division. If the project is environmentally categorically exempt, the applicant decides if the planning staff or planning commission will approve the project. If the project requires an environmental negative declaration or an EIR/EIS (each of which requires a public hearing), the applicant decides if the zoning administrator or the planning commission will approve the project. See city planning fee schedule.

c. Appeals. Should an applicant not agree with the city planning commission they may appeal that decision pursuant to Chapter 2.35 SLTCC.

d. Organization. The design standards are laid out to identify what the project is required to include as a part of its design. These requirements are designated as “standards” and are mandatory.

The standards are divided into two main groups: 1) the city-wide design standards, and 2) the community plan design standards. All projects must comply with the city-wide standards and if the project is within one of the three community plans (Stateline/Ski Run, Bijou/Al Tahoe, and the WYE/Industrial), it must also comply with those standards. (Ord. 903; Ord. 985 § 1; Ord. 1105 § 1 (Exh. B). Code 1997 § 5-17)

6.55.010 Purpose.

As set forth in the general plan, the plan area statements provide detailed plans and policies for specific areas of the city. The plan area’s written text and maps, as well as the other land use regulation’s written text, provide

specific land use policies and regulations for a specific planning area. Each planning area is depicted on the plan area maps.

The plan area statements and other land use regulations are adopted to promote and protect the public health, safety, peace, comfort, convenience, general welfare and environment, natural and manmade. (Ord. 902; Ord. 1060 § 1 (Exh. A). Code 1997 § 32-1)

6.55.620 Granting of use permits.

A. Authority. The zoning administrator or the planning commission may, with the procedure specified in SLTCC 6.55.640, grant a use permit to authorize a special use and structure devoted to such use, on a specific parcel within a plan area; provided, that such use is allowed by use permit.

B. Required Findings. The zoning administrator or the planning commission may grant a use permit; provided, that it is found that the use applied for is:

1. Necessary or desirable on a specific parcel;

2. Not injurious to the neighborhood;

3. Consistent with the intent of this chapter; and

4. Consistent with the permitted uses in such plan area. (Ord. 902. Code 1997 § 32-60)

Bridget Cornell

From: Concerned Citizens of South Lake Tahoe <celltowers.slt@tutanota.com>
Sent: Wednesday, May 11, 2022 11:54 PM
To: John Marshall; Katherine Hangeland
Cc: Joanne Marchetta; Bridget Cornell
Subject: URGENT—Tahoe Season WTF hearing—Continuance

Dear TRPA,

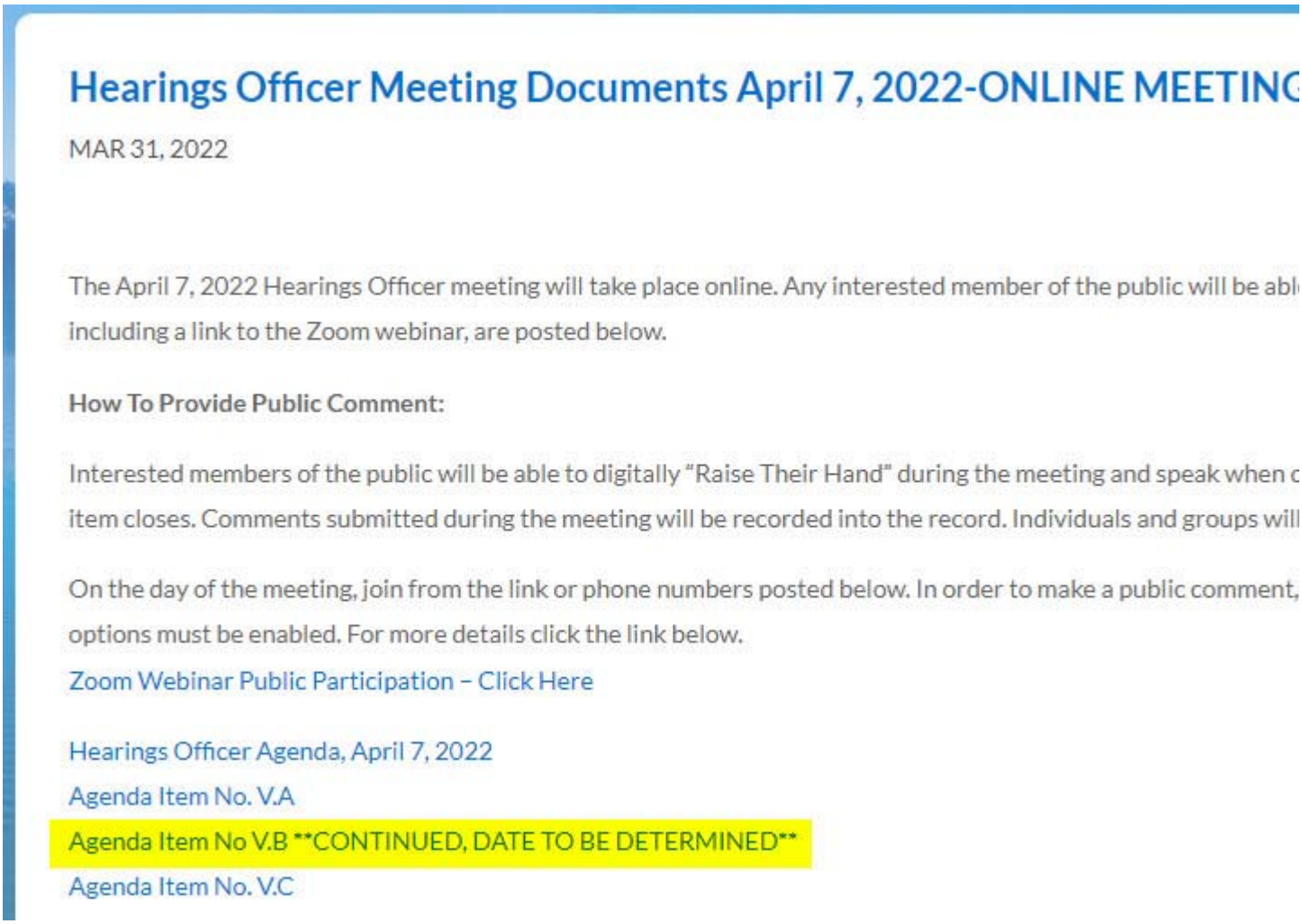
Our legal expert and author of our legal brief had an appendicitis very late this afternoon and is undergoing surgery. We ask that you continue this hearing to May 26th 2022. We note that Verizon had previously requested that TRPA schedule a hearing on a *long dormant application*† for April 7th 2022, and then canceled their hearing last minute to our own peril:

Now a "force majeure" medical matter has catastrophically impacted our availability, and we ask for the same courtesy. Please add this to the record.

Sincerely,

Concerned Citizens of South Lake Tahoe

† The City of South Lake Tahoe issued a "Special Use Permit" for the Tahoe Seasons WTF in November 2020 which **expired** back in November 2021. The applicant acquiesced their "shot clock" rights under the Telecommunications Act, and this hearing is now unexpected to many—if not most—neighboring residents in the area. Moreover, the TRPA website is currently communicating that the hearing date—which was once herein listed as April 28th—has still not been rescheduled:



Hearings Officer Meeting Documents April 7, 2022-ONLINE MEETING

MAR 31, 2022

The April 7, 2022 Hearings Officer meeting will take place online. Any interested member of the public will be abl
including a link to the Zoom webinar, are posted below.

How To Provide Public Comment:

Interested members of the public will be able to digitally "Raise Their Hand" during the meeting and speak when c
item closes. Comments submitted during the meeting will be recorded into the record. Individuals and groups will

On the day of the meeting, join from the link or phone numbers posted below. In order to make a public comment,
options must be enabled. For more details click the link below.
Zoom Webinar Public Participation – Click Here

Hearings Officer Agenda, April 7, 2022
Agenda Item No. V.A
Agenda Item No V.B **CONTINUED, DATE TO BE DETERMINED**
Agenda Item No. V.C