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SHOW CAUSE HEARING SUMMARY

Date: August 19, 2020

To: TRPA Governing Board

From: TRPA Staff

Subject: Notice of Violation, Justin Sheaff/Mountain Addiction LLC, Unauthorized Tree Cutting, California Tahoe Conservancy Property, Placer County, California, APNs 092-010-021, -035

Requested Action:

To conduct a Show Cause hearing on the May 8, 2020 Notice of Violation ("NOV") issued to Justin Sheaff and Mountain Addiction LLC (collectively "Mountain Addiction") for cutting down without authorization five trees greater than 14 inches on CTC property located in Placer County, and to determine whether to pursue a judicial action to assess a civil penalty.

Staff Recommendation:

Staff recommends that the Governing Board conduct the hearing and vote to direct the Executive Director and General Counsel to pursue a judicial action to assess a civil penalty for the violations alleged in the NOV.

Motion:

1. A motion to direct the Executive Director and Agency Counsel to pursue a judicial action to assess Justin Sheaff and Mountain Addiction LLC a civil penalty for the conduct alleged in TRPA's May 8, 2020 Notice of Violation.

In order to grant the motion, any eight affirmative votes are required.

Introduction:

Some time prior to January 23, 2020, approximately 50 live trees were cut down, a number of dead stumps and trees were trimmed down or felled, and numerous branches of manzanita bushes were cut to create a winter time route for a wide vehicle, such as a snow cat, that originated from a residential building owned by Mountain Addiction LLC, traversing the CTC property and ending in the paved multi-use path. The route and location of the cutting activity is shown on Attachment A. Five of the live trees cut were cut in violation of TRPA's ordinances prohibiting the felling of trees over 14 inches without a permit.

There is no dispute the cutting took place without authorization from either TRPA or CTC; the only dispute is over who did it. TRPA staff contends that the weight of the evidence of the purpose, location, opportunity and benefit render it likely that Mountain Addiction LLC and Justin Sheaff, a principal, were responsible for the activity and violations of TRPA's Code of Ordinances. Sheaff and Mountain Addiction

LLC deny any involvement with the cutting activity and further contend that the cutting was random and for no apparent purpose.

The Executive Director's May 8, 2020 NOV is appended as Attachment B. On June 2, 2020, Mountain Addiction submitted its Response to the NOV and it is appended as Attachment D. (The Response includes as Appendix No. 1, a civil complaint TRPA filed in federal court. TRPA filed this complaint to preserve its enforcement options pending the Governing Board's Show Cause hearing because Sheaff and Mountain Addiction LLC refused to execute a second waiver of the applicable statute of limitations.) CTC recently submitted a response (Attachment G) to Mountain Addiction's response.

Pursuant to TRPA Rules of Procedure Article 9.13, TRPA Staff submits this hearing summary with the following required elements: (1) a review the uncontested facts, (2) the factual and legal contentions of the parties, and (3) a summary of the issues to be determined. Because there is no dispute that five trees were cut without authorization, the Show Cause hearing will focus on who did it.

Statement of Uncontested Facts:

The CTC property comprises over 500 acres of public land. The parcels have been used by the public for recreation purposes year-round. Several informal summer hiking and mountain biking trails cross the property as well as the Dollar Creek paved shared use path.

In 2018, Mountain Addiction LLC built, pursuant to a TRPA permit, a single-family addition to an existing residence that resulted in a completed single structure with 3,500 square feet ("SF") of living space and 7,000 SF of garage and storage. The structure is located on the northwest corner of the Mountain Addiction Property and adjacent to the east side of the CTC Property. See Attachment A. The structure includes a rear garage door and ramp leading directly to the CTC Property that can be used for snowmobile access. See Attachment F (plans) and Attachment C.1 (photographs). Justin Sheaff is a principal of, and represented Mountain Addiction LLC, in the permitting for this project.

On January 23 and 31, 2020, CTC personnel inspected the CTC property and discovered the unauthorized cutting of trees and other resource damage on the property by snow cat access behind the Mountain Addiction residence. On February 6, 2020, CTC and TRPA staff inspected the site and documented damage to CTC property. TRPA staff also visited the site on June 10, 2020. Photographs from these various inspections are aggregated in Attachment C.

The CTC and TRPA inspections revealed over-the-snow parallel vehicle tracks indicating that someone had traveled from the Mountain Addiction property across the CTC property on to the Dollar Creek multi-use path along a route identified in Attachment A. At the time of the CTC and TRPA winter inspection a snow-cat was parked on the Mountain Addiction property. Sheaff stated to CTC staff that he owned that snow cat and that he had been on the property when the snow cat travelled between the house and the paved bike path along the created route.

Approximately 50 live trees of various sizes were cut. Of the trees felled, five trees were greater than 14 inches diameter at breast height ("dbh"). TRPA has not issued a permit to any person or entity (except CTC) to cut, remove, or materially damage trees on the CTC Property. CTC informs TRPA that it has not authorized any party to cut trees on the CTC Property.

Justin Sheaf conducts "maintenance" on the CTC property during the winter for over-the-snow uses.

Factual and Legal Contentions of the Parties:

TRPA contends that the following facts establish Mountain Addiction's responsibility for the cutting of trees and other vegetation, including five trees over 14 inches dbh, on the CTC property.

- A. Five live trees greater than 14 inches dbh were cut without authorization from TRPA or CTC.
- B. The cutting of the five live trees without authorization violates TRPA's Compact, Regional Plan, and Code of Ordinances.
- C. Justin Sheaff and Mountain Addiction LLC are responsible for the illegal cutting of these five live trees.
 1. The location and pattern of cutting created an over-the-snow access route between the Mountain Addiction property and the Dollar Creek multi-use path on the CTC property.
 - a. The cutting and damage were oriented linearly on a route between the Mountain Addiction house and the paved bike trail. See Attachment A (CTC map).
 - b. All cutting and damage occurred within the corridor for the access route and provide a clear route therein. See Attachments A (CTC map), C (photographs).
 - c. This summer TRPA walked transects across the CTC property (see Attachment E for map of inspection transects) and could not locate any other similar damage on the CTC property other than within the route on Attachment A.
 - d. Cut trees were bucked and moved off the route and left on site. Trees felled to land outside path were not bucked. Photographs in Attachment C.1, C.2.
 - e. Some trees were limbed to create space that likely accounts for snow accumulation. Photographs Attachment in C.3.
 - f. Various size trees were cut (from 4 inches dbh to 32 inches dbh) indicating clearing of space was the objective of the cutting rather than forest health.
 - g. Trees left uncut indicate no intent to treat CTC property for forest health reasons. No trees, stumps, or manzanita cut outside of route. See Photographs in Attachment C.3.4.
 - h. Route connected open areas to minimize necessary tree cutting and avoid steep slopes.
 - i. Stumps, snags, and larger manzanita cleared from route. As demonstrated by photographs these items posed both barriers and potential sharp threats to snow cat tracks.
 - j. A snow cat used route between Mountain Addiction house and paved bike trail. Photographs in Attachment C.2.

- k. The width of track accommodates snow cats and provides room to accommodate tree snow wells, limbs, rocks, etc. Photographs in Attachment C.2, C.3.
 - m. Cutting pattern inconsistent with current CTC forest management prescriptions.
2. Mountain Addiction had the motive, means, and opportunity to create the over-the-snow access route between their property and the Dollar Creek multiple-use path.
- a. Sheaff and other Mountain Addiction principals are “avid outdoor enthusiasts,” including snowmobiling. Response at 8.
 - b. The design and placement of the Mountain Addiction house indicate an intent to access the CTC property.
 - i. Placement of house near to CTC property. Attachment F (plans), Attachment C.1 (photographs).
 - ii. Outsized garage to house multiple snow machines. Attachment F (plans), Attachment C.1 (photographs).
 - iii. Multiple garage doors including one with driveway leading directly to CTC property and start of cutting route to Dollar Creek multi-use path. Attachment F (plans), Attachment C.1 (photographs).
 - c. The over-the-snow route connects, and provides access from, the Mountain Addiction house and the Dollar Creek multi-use path on the CTC property.
 - d. Sheaff owns a snow cat, a snow cat was photographed on site in January/February 2020, and Sheaff was “present” on the site when the snow cat travelled between the Mountain Addiction house and the paved bike path along the created route. Response at 8; Sheaff statements to CTC; photographs.
 - e. During this winter, the area around the garage doors of the Mountain Addiction house were groomed with a snow cat. Attachment C.1 (photographs).
 - f. Sheaf admits he “maintained in the winter [] the existing trail from Old County Road which leads to the bike path and the bike path itself.” Response at 8. And, “[m]aintenance consisted of wintertime grooming” Id. Sheaff admits grooming the Dollar Creek multi-use path with his snow cat during the winter. Response at 5.
 - g. Respondents admit they could have performed the clearing as “it is clear that anyone with knowledge of how to operate a chainsaw could have cut the trees down.” Response at 10. Sheaff admits he knows how to operate a chainsaw. Id.

- h. Given the significant effort involved in clearing the route, it is unlikely anyone but Mountain Addiction would have undertaken the activity.

In their Response (Attachment D), Mountain Addiction contends the following allegations establish they were not responsible for the cutting of the trees on the CTC property.¹

A. Mountain Addiction will not benefit from the tree cutting.

- 1. Rather than creating the route, the activity was the “[r]andom cutting of trees with no apparent purpose in mind” and [n]othing more than the sporadic, and perhaps, senseless, cutting of trees for no apparent reason.” Response at 2.
 - a. Other trees on the CTC property outside of the route greater than 14 inches dbh had been cut in the past. Response at 6.

[TRPA response: The recent cutting activity of trees, snags, stumps, and manzanita was confined to, and did not occur outside of, the route between the Mountain Addiction house and the Dollar Creek multi-use path.]

- 2. Alternatively, the respondents contend the CTC property was “masticated in recent years by heavy machinery to reduce fuel.” Response at 4.

[TRPA response: CTC has not treated the CTC property in recent years. The recent cutting activity of trees, snags, stumps, and manzanita was confined to, and did not occur outside of, the route between the Mountain Addiction house and the Dollar Creek multi-use path. The cutting bears no relationship to any CTC prescription for fuel reduction.]

- 3. Sheaff did not need to cut several of the trees in order to provide access on the route for his 12-foot snow cat. Response at 4, 10 (attached photographs indicating distances greater than 12 feet from some larger stumps to edge of route).

[TRPA response: The distance from a cut stump to the base of a tree on the edge of the route (see e.g., Response at Exhibit 6) is not the relevant measurement. For this over-the-snow route, one must also take in consideration, for example, the route with significant snow accumulation creating tree snow wells, the reach of branches into the route from both trees on the edge and the cut trees with snow under tread, the cross-slope where one might desire greater width, avoidance of other obstacles such as rocks. TRPA need not establish why whoever created the route decided to cut each particular tree, stump, snag or bush. Collectively, the impact of the all the cutting is the creation of a wide route capable of allowing easier access for powered over-the-snow machines like a snow cat.]

¹ The respondents include significant material in their Response that is irrelevant to resolution of remaining issues in this matter (e.g., whether Mountain Addiction uses the house for commercial purposes, the CTC/TRPA negotiation process to date). TRPA does not address these issues in this hearing summary.

- B. Neither Sheaff nor anyone from Mountain Addiction were on site from mid-January to mid-February 2020 when respondents allege CTC states the cutting took place. Response at 10.

[TRPA's response: TRPA and CTC do not know when the cutting activity took place except that it occurred prior to January 23, 2020 (the date of the first observation of the cut trees and other damage by CTC staff) after a winter snow fall (saw dust observed on top of snow). That Sheaff or other Mountain Addiction principals or guests were not present on the site starting January 10, 2020 fails to exculpate them.]

- C. Other people use the CTC property for recreational activities, including snowmobiling and possibly UTV side-by-sides. Response at 3, 5.

[TRPA response: That the public may use the CTC property for winter motorized recreational activities in the past does nothing to curtail the specific benefit gained to Mountain Addiction from the route from their back door to the Dollar Creek multi-use path. Respondents also do not provide a reason why these users would undertake the intensive effort necessary to create the route. As to respondents claim that UTV side-by-sides could have created the snow cat tracks, staff observation of such vehicles indicates that the tracks are narrower than the tracks photographed and regardless, Sheaff admitted that the snow cat travelled on the route when he was there.]

The Issues to be Resolved:

During the Winter of 2019-2020, somebody created an over-the-snow trail between the Mountain Addiction LLC property and the Dollar Creek multi-use path across the CTC property wide enough for a snow cat. TRPA staff contends Justin Sheaff and Mountain Addiction LLC were responsible for the creation of the snow cat route and are therefore legally responsible for the cutting of five trees greater than 14 inches dbh in violation of TRPA Code of Ordinances Sections 2.3.2.M and 61.1.5. In order to concur in this recommendation, the Governing Board needs to resolve the following outstanding issues:

- A. Is it more likely than not that Justin Sheaff and Mountain Addiction LLC were responsible for the clearing of the over-the-snow route and the felling of the five trees over 14 inches dbh on the CTC property?
- B. Should TRPA staff seek a judicial assessment of civil penalties against Justin Sheaff and Mountain Addiction LLC?

If the Governing Board believes the answer to these two issues is yes, staff recommends the Governing Board approve a motion to direct the Executive Director and Agency Counsel to pursue a judicial action to assess Justin Sheaff and Mountain Addiction LLC a civil penalty for the conduct alleged in TRPA's May 8, 2020 Notice of Violation.

Contact Information:

For questions regarding this agenda item, please contact John Marshall, General Counsel, at (775) 303-4882 or jmarshall@trpa.org, or Steve Sweet, Compliance Program Manager, at (775) 589-5250 or ssweet@trpa.org.

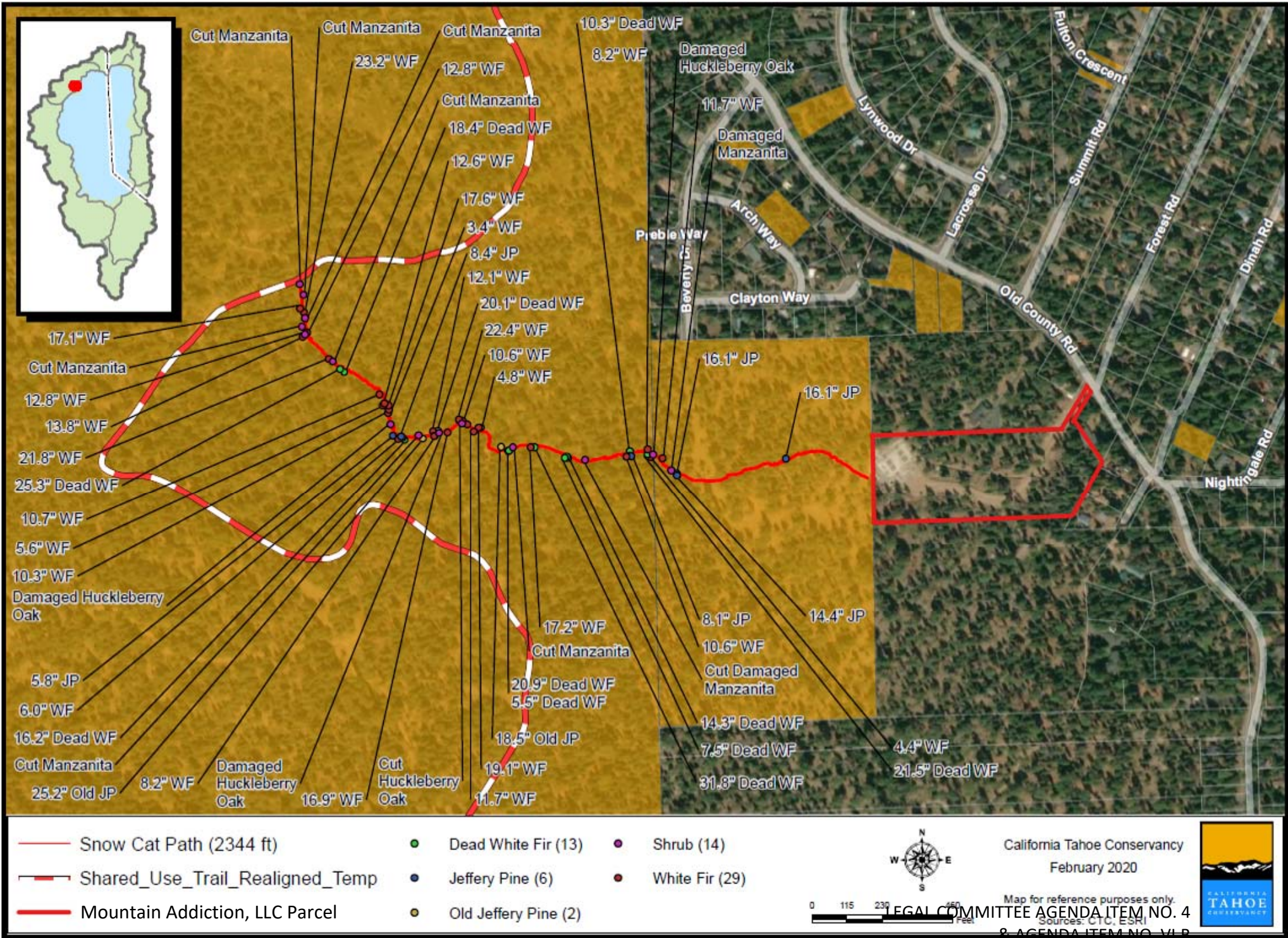
Attachments:

- A. CTC Property Map: Conservancy Resource Damage
- B. March 8, 2020 NOV
- C. CTC/TRPA Site Photographs
 - C.1. January 2020 CTC Photographs
 - C.2. February 6, 2020 TRPA Photographs
 - C.3. June 10, 2020 TRPA Photographs
- D. Sheaff/Mountain Addiction LLC Response to NOV
- E. CTC Property Inspection Transects
- F. Site and Building Plans
- G. August 18, 2020 CTC Response to Sheaff/Mountain Addiction Response to NOV

Attachment A

CTC Property Map: Conservancy Resource Damage

Conservancy Resource Damage



California Tahoe Conservancy
February 2020

0 115 230 460 Feet

Map for reference purposes only.
Sources: CTO, ESRI



LEGAL COMMITTEE AGENDA ITEM NO. 4

& AGENDA ITEM NO. VI.B

Attachment B

March 8, 2020 NOV



Mail
PO Box 5310
Stateline, NV 89449-5310

Location
128 Market Street
Stateline, NV 89449

Contact
Phone: 775-588-4547
Fax: 775-588-4527
www.trpa.org

May 8, 2020

Justin Sheaff
200 A N Rogers Street
Waxahachie, TX 75165

Mountain Addiction LLC
200 A N Rogers Street
Waxahachie, TX 75165

Send via email to: basile@portersimon.com

**NOTICE OF VIOLATION AND VIOLATION REPORT, UNAUTHORIZED TREE REMOVAL,
CALIFORNIA TAHOE CONSERVANCY PROPERTY, PLACER COUNTY, CALIFORNIA, ASSESSOR
PARCEL NUMBER (APN) 092-010-021 AND 092-010-035.**

Dear Justin Sheaff and Mountain Addiction LLC:

This Notice of Violation is directed to Justin Sheaff and Mountain Addiction LLC. Both Parties are represented by attorney Lou Basile, and so this Notice is being delivered to Mr. Basile on behalf of each of his clients as well as mailed to each party.

(a) Nature of Violation

Pursuant to Article IX of the Tahoe Regional Planning Agency ("TRPA") Rules of Procedure, this Notice of Violation and Violation Report is being issued to Justin Sheaff ("Sheaff") and Mountain Addiction LLC ("Mountain Addiction") for unauthorized tree removal activities on land owned by the State of California and managed by the California Tahoe Conservancy (the "CTC"). The CTC parcels, APN 092-010-021 and 092-010-035 (hereafter referred to as the "CTC Property"), lay uphill and between the Mountain Addiction Property and other public lands owned by the United States and managed by the U.S. Forest Service. Mountain Addiction and the general public use these federal lands for winter activities, including snowmobiling.

(b) Correction of the Violation

The intent of the Rules of Procedure, Article IX, is to promote resolution of violations at the administrative level. The steps necessary to correct the violation are set forth below in the proposed resolution of enforcement action.

(c) Cease & Desist

TRPA previously issued a Cease & Desist Order for the unauthorized activities on the CTC Property on March 18, 2020 to Sheaff and Mountain Addiction.

(d) Show Cause Hearing

A Show Cause Hearing before the TRPA Governing Board will be scheduled during the June 24, 2020 Governing Board meeting beginning at 8:30 a.m. This meeting will be held virtually. In the event that a settlement is reached prior to June 24, 2020, the Show Cause Hearing will be cancelled and the settlement agreement will be submitted to the Governing Board for approval. In the event that any or all parties fail to respond to this Notice of Violation, the Show Cause Hearing will be cancelled and further enforcement action, including the prosecuting a civil complaint in a court of law, may be commenced.

VIOLATION REPORT

**UNAUTHORIZED TREE REMOVAL ACTIVITIES, COUNTRY CLUB ROAD, PLACER COUNTY, CA,
ASSESSORS PARCEL NUMBER (APN) 092-010-021.**

(a) Noticed Party:

Justin Sheaff
200 A N Rogers Street
Waxahachie, TX 75165

Mountain Addiction LLC
200 A N Rogers Street
Waxahachie, TX 75165

(b) Provisions of the Tahoe Regional Planning Compact and the Regional Plan Package
violated:

Tahoe Regional Planning Compact, P.L. 96-551, 94 Stat. 3233 (1980), Art. V(g), VI(b).

TRPA Code of Ordinances:

- TRPA Code Section 61.1.5: Removal of trees greater than 14 inches dbh shall require approval by TRPA.
- TRPA Code Section 2.3.2.M: The tree removal is a non-exempt project and must be reviewed by TRPA.

(c) Statement of Facts:

In 2018, Placer County issued a building permit to Mountain Addiction for a single-family addition that included 3500 SF of living space and 7000 SF of garage/storage. The project is located adjacent to the south side of the CTC Property and includes a rear garage door leading directly out to the CTC Property for snow cat and snowmobile access. Sheaff was both the representative for Mountain Addiction and the main contact for this project.

Placer County, CTC, neighboring property owners, and TRPA staff raised concerns that this single-family home was being converted to a commercial snowmobile retreat. The residence, including the 7000 SF garage used for snow cat and snowmobile storage, is not the typical residence in this area.

Notice of Violation and Violation Report

Sheaff/Mountain Addiction LLC

Page 4 of 6

In late January 2020, TRPA received information from the California Tahoe Conservancy (CTC) that the CTC Property had been damaged by snow cat access behind the residence on the Mountain Addiction Property. The photos taken during the CTC inspection showed evidence of disturbance caused by the snow cat including tracks leading to the Mountain Addiction Property where the snow cat was stored.

On February 6, 2020, TRPA staff inspected the site and found that approximately 35 live trees of various sizes were cut and left along a trail system on the CTC Property used for snow cat and snowmobile access by Sheaff and Mountain Addiction. At that time, TRPA staff discovered that 5 trees between 14 inches dbh to 23 inches dbh were removed without approval by TRPA in violation of TRPA Code Section 61.1.5 (Removal of trees greater than 14 inches dbh shall require approval by TRPA) and TRPA Code Section 2.3.2.M (The tree removal is a non-exempt project and must be reviewed by TRPA). The tree removal activities appeared to be done by someone with tree cutting experience in order to improve snowmobile access on that trail system and making the trail large enough for the snow cat owned by Sheaff to now access and groom a larger trail system above the Mountain Addiction property.

On March 18, 2020, TRPA issued a Cease and Desist requesting additional information from both Sheaff and Mountain Addiction. Sheaff and Mountain Addiction state that neither party were responsible for the tree cutting and, furthermore, had no knowledge of who could have been responsible. However, in a response letter to the CTC dated April 14, 2020 they state that Sheaff has voluntarily maintained the trails in the winter for the aforementioned uses.

Sheaff, who is a Cal Fire wildland firefighter and a professional snowmobile rider, has explained that this is not his permanent residence but rather is a second home for him, his friends, and his business partners with Mountain Addiction to stay when they visit Lake Tahoe. Sheaff has also stated that other residents in the neighborhood have snowmobiled in this area for decades. However, this new tree removal activity only occurred after the Mountain Addiction residence was constructed and is now occupied with visitors. While the CTC property is a popular snowmobile area for residents, the driveway for the Mountain Addiction property is located on one of the access points. Some residents in the neighborhood have expressed that due to the construction of the driveway leading to Mountain Addiction's private residence, they concluded that this access is no longer available for public use.

On April 27, 2020, TRPA sent a settlement offer to both Sheaff and Mountain Addiction to resolve the unauthorized activities with TRPA. The settlement offer included a \$25,000 monetary penalty (\$5,000 per tree over 14 inches dbh). TRPA has received no response to this proposal.

(d) Documentary Evidence:

The most relevant documentation to this Notice of Violation is hyperlinked in the following list:

- [Public Law 96-551; Tahoe Regional Planning Compact](#)
- [TRPA Rules of Procedure, Article IX, Compliance Procedures](#)
- [TRPA Code of Ordinances](#)

Additional documentary evidence supporting the determination of a violation, including written statements and photographs, are in TRPA's possession and may be requested via electronic mail or reviewed at the TRPA office in Stateline, Nevada.

(e) Proposed Resolution of Enforcement Action:

The Tahoe Regional Planning Compact provides for substantial penalties for violations of TRPA ordinances or regulations.

Article VI of the Compact States:

Any person who violates any ordinance or regulation of the Agency is subject to a civil penalty not to exceed \$5,000 and an additional civil penalty not to exceed \$5,000 per day, for each day on which a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.

As a means of resolving this matter, TRPA proposes the following resolution:

1. The Settling Parties (Justin Sheaff and Mountain Addiction LLC.) shall pay TRPA \$25,000 within 30 days of Governing Board approval of this Settlement Agreement.

(f) Governing Board Show Cause Hearing

A Show Cause Hearing before the TRPA Governing Board and its Legal Committee has been scheduled for the June 24, 2020, Governing Board virtual meeting. The Legal Committee commences at 8:30 a.m. At the conclusion of the hearing the Legal Committee will recommend to the Governing Board a course of action to resolve this matter. The Legal Committee may recommend that the Governing Board affirm, modify, or withdraw the Executive Director's determination of violation, authorize legal counsel to pursue judicial remedies, determine and offer a proposed resolution, or recommend such other action as deemed appropriate by the Legal Committee. The Governing Board will consider the matter after the 9:30 a.m. commencement of the Governing Board meeting.

Notice of Violation and Violation Report

Sheaf/Mountain Addiction LLC

Page 6 of 6

If the Settling Parties decide to pursue a settlement of the violations, the Show Cause Hearing will be stayed pending the outcome of the settlement efforts. Such a stay will occur if the Settling Parties provide a response as set forth in subsection (h) below. Settlement of this matter, by acceptance of the above-proposed resolution or an alternative proposal agreed upon by all parties, is the preferred option. Any settlement reached by the parties will require review and approval by the Legal Committee and the Governing Board.

(g) Response Due Date:

Per Article IX of the TRPA Rules of Procedure (enclosed), you may serve a written response within twenty-one (21) calendar days of the date of this Notice of Violation.

(h) Election to Pursue Settlement:

Pursuant to TRPA Rule of Procedure 9.10, if you wish to pursue settlement of this violation your response must include acceptance of or a response to the settlement proposed above. Your response must also include a waiver of the Statute of Limitations (copy enclosed). If TRPA does not receive acceptance of or a response to the proposed settlement by May 22, 2020 the Agency will consider settlement discontinued, and the scheduled Show Cause Hearing will proceed at the June 24, 2020 TRPA Governing Board.

If you have questions, I may be reached at 775-589-5281, 8:00 a.m. through 5:00 p.m., Monday through Friday.

Sincerely,



Steve Sweet

Code Compliance Program Manager

Attachment C

CTC/TRPA Site Photographs

Attachment C.1

January 2020 CTC Photographs





Attachment C.2

February 6, 2020 TRPA Photographs





































































C.2.35

















C.2-43





C.2.45











Attachment C.3

June 10, 2020 TRPA Photographs









2020-06-10 13:33

C.3.5



LEGAL COMMITTEE AGENDA ITEM NO. 4
& AGENDA ITEM NO. VI.B



































































2020-06-10 14:40

C.3.39



Attachment D

Sheaff/Mountain Addiction LLC Response to NOV

RESPONSE TO NOTICE OF VIOLATION

Section 9.8 TRPA Code of Ordinances – Rules of Procedure

Respondents:

Justin Sheaff
Mountain Addiction, LLC
c/o Porter Simon PC
Post Office Box 5339
Tahoe City, CA 96145
530.583.7268
basile@portersimon.com

INTRODUCTION

The Notice of Violation naming Justin Sheaff and Mountain Addiction, LLC (hereafter, collectively, “Respondents”) asserts that they cut down trees and vegetation on land owned by the State of California and managed by the California Tahoe Conservancy (“CTC”). The CTC land is located adjacent to property owned by Mountain Addiction and is also bordered on United States Forest Service (“USFS”) land. It is undisputed that the CTC land has historically been used by the general public for decades, perhaps over forty years. Those uses consist of year-round recreational activities including hiking, walking, mountain bike riding, snow shoeing, cross country skiing, snowmobiling and other general recreational uses.

TRPA issued its Cease and Desist Order to Respondents on March 18, 2020. Respondents responded in mid-March by way of direct communication between Justin and Steve Sweet of TRPA and through their attorney having direct telephone contact with Mr. Sweet on March 31, 2020 and April 1, 2020. During those conversations Respondents learned that 29 White Firs, 14 shrubs, 13 dead trees and 8 Jeffrey Pines had been cut down, and that such activities had taken place during late January, 2020. Of the White Firs and Jeffrey Pines, 5 were measured by TRPA staff at greater than fourteen inches at DBH which forms the basis of the Notice of Violation. Drone video footage shows sporadic cutting of trees throughout the area with no specific area that would indicate a path of travel.

During its inspection in February, 2020, CTC staff prepared an exhibit entitled Conservancy Resource Damage which purportedly shows the location of the White Firs and Jeffrey Pines that had been cut down as well as several dead trees and shrubs. A recent inspection of the CTC land by Respondents show that several trees throughout the area, both live and dead, have been fallen in addition to those plotted by CTC. The Conservancy Resource Damage exhibit shows that the felled trees form a somewhat convoluted and meandering route across the CTC land that connects with the newly constructed paved public bike path. However, a physical inspection of the CTC land, actual photos taken by TRPA and drone video footage do

not support the notion that some sort of route exists. The TRPA photos clearly show that the locations of the felled trees do not support the notion that someone had an intent to create a new trail, path or route through the forest for any purpose. Instead, they appear to show that there were random cutting of trees with no apparent purpose in mind. Moreover, Respondents have had no reason whatsoever to create a new trail, path or route through the forest. Respondents' photographs, with GPS locations, illustrate the random nature of trees that were cut down.

In an attempt to resolve issues that resulted in the Notice of Violation, Respondents' attorney communicated with TRPA's attorney John Marshall relative to Respondents signing a waiver of the statute of limitations in order to pursue further investigation of the matter. Respondents agreed to a short waiver and signed waivers of the statute of limitations. Instead of conducting further investigation, TRPA elected to move forward with a Notice of Violation and file an action in U.S. District Court.¹ Respondents forwarded a letter to TRPA² expressing surprise at this turn of events and, in addition, forwarded a letter to CTC in response to the accusations levied against them.³

Respondents adamantly deny that they engaged in the aforementioned activity and assert that they have no knowledge as to the persons responsible for the tree and shrub damage.

STATEMENT OF FACTS

The Statement of Facts in the Notice of Violation alludes to various circumstances with which Respondents wholly disagree as discussed below. Actually, the circumstances presented by TRPA and CTC, other than photographs, are based upon opinion, speculation and conjecture. TRPA's and CTC's photographs, standing alone, show nothing more than the sporadic, and perhaps senseless, cutting of trees for no apparent reason. By contrast, Respondents offer actual facts based upon their personal knowledge and documentary evidence. It is clear that the opinions, speculation and conjecture alluded to by both TRPA and CTC are not supported by the facts and evidence.

A. PERMITTING AND APPROVAL FOR MOUNTAIN ADDICTION RESIDENCE

Mountain Addiction applied for and obtained a Placer County permit to build a single family residence on its property. The Mountain Addiction project was approved by Placer County and TRPA. During the permitting process, Mountain Addiction was made aware that three (3) neighboring property owners had contacted TRPA with the concern that the residence was to be used for commercial snowmobile tours/rentals. TRPA staff member Paul Neilson and Placer County staff member Heather Beckman had apparently fielded calls from these neighbors who were not in favor of the project and expressed their discontent. Justin's understanding was that these neighbors notified the CTC in the fall of 2018 that a "snowmobile lodge" was being built with plans to run snowmobile tours. Upon learning of the neighbors' false statements to

¹ See Appendix No. 1 (Notice of Violation and filed Complaint filed in U.S. District Court)

² See Appendix No. 2 (Email to John Marshall dated April 28, 2020)

³ See Appendix No. 3 (Letter to Jack Matthias of CTC dated April 14, 2020)

TRPA and Placer County that Mountain Addiction was building a “snowmobile lodge” Justin explained, not only to TRPA and Placer County, but also to CTC exactly what Mountain Addiction was building, to wit: a residence with a large garage for storage of recreational equipment used during the summer and winter. Thus, prior to permit approval, TRPA, Placer County and CTC were not only aware of the complaints of three neighbors, but were also aware of the fact that Respondents had no intention of creating a “snowmobile lodge” or running a commercial operation. Indeed, neither the residence nor the Mountain Addiction property was ever intended to be used, or has ever been used, for those purposes or for commercial purposes. Instead, the residence, completed in November, 2019 was built exclusively for the use of Mountain Addiction and its principals who are avid outdoor enthusiasts.

B. PURPOSE OF MOUNTAIN ADDICTION RESIDENCE AND USE OF CTC LAND

The Mountain Addiction residence is used by its owners and guests for the purpose of enjoying the Lake Tahoe region and all of the outdoor activities that it has to offer. The Mountain Addiction, LLC principals, their families and friends, are all outdoor enthusiasts who partake in the recreational offerings of the Lake Tahoe region.

Justin, one of Mountain Addiction’s principals, has lived in the Lake Tahoe area for 14 years and had been visiting all his life as his grandparents lived on the West shore dating back to the 1950’s. Justin has been active in the local Search & Rescue utilizing his knowledge of the backcountry to help others for many years. Justin is an avalanche instructor in addition to being a professional structural fireman. He spends much of his time recreating in the outdoors year around. He is also well known in the local community as an avid snowmobiler and outdoorsman and is widely recognized for his unique freeriding style and backcountry abilities.

Mountain Addiction initially purchased the property in 2017. Both before and since the residence was built, Justin frequented the property during the winter. It is worthy to note that the CTC property, described as a “wild life parcel”⁴, adjoins several other parcels on which there are at least twelve homes, has several major trails that are, and have historically been, heavily used for hiking, snowmobiling, skiing, biking and both motorized and non-motorized use and has a newly constructed paved bike path. Accordingly, Respondents, as do scores of other residents and visitors to the Lake Tahoe area, access their property, the CTC land and USFS land for summer and winter activities including those mentioned above. The property has been used for such purposes dating back to at least 1980.

C. CTC DISCOVERY OF FALLEN TREES

This past January, CTC personnel visited the CTC land and made various observations. On January 23, 2020 Jack Mathias inspected the land and found resource damage created by snowmobiles. He took photographs of the area. Eight days later, on January 31, 2020, Kelsey Lemming inspected the CTC land and found snow cat tracks which appeared to be over some snowmobile tracks. She discovered trees that had been cut down on the CTC land and took

⁴ See Appendix No. 4 (Mountain Addiction plans on file with TRPA)

pictures. On February 6, 2020 Jack and Kelsey met on site with TRPA personnel and viewed what had earlier been reported by Jack and Kelsey. At some point in time, TRPA was on site and took additional photographs of the CTC land. However, the date of those photographs has not been disclosed. On February 10, 2020 CTC personnel met with Justin to discuss what had transpired in late January. Justin informed CTC personnel that he did not know who had cut down the trees. In the ensuing weeks TRPA staff had discussions with neighbors in the area, none of whom had seen any tree cutting activity taking place. During the time that CTC reported the cutting of trees and disturbance of vegetation, neither Justin nor any Mountain Addiction affiliates were at the property.

Notably, the CTC land was masticated in recent years by heavy machinery to reduce fuel. Current photographs of the CTC property show that there are several fallen trees, both of which appear to be live and dead, throughout. Thus, the fallen and dead trees are not confined to the areas exhibited in the photographs taken by CTC and TRPA.

D. NEITHER JUSTIN NOR MOUNTAIN ADDICTION PRINCIPALS OR FRIENDS WERE ON CTC LAND BETWEEN EARLY JANUARY TO EARLY FEBRUARY, 2020

According to the inspection reports by CTC personnel, it estimates that the tree and shrub cutting occurred during the last week of January, 2020. Neither Justin nor the principals of Mountain Addiction were at the Mountain Addiction residence during that timeframe with the possible exception of Justin and his family being at the residence during evening hours.

During late January, 2020, Justin was teaching avalanche/rescue classes on January 10-12, 17-19, 24-26, 2020 and from January 31-February 2, 2020. On January 13-16, 2020 he was involved in a film shoot for a snowmobile company. On January 27, 2020 he was involved all day on an assignment with a local powersports dealer. On January 21-23 and 28-30, 2020 he was on duty at the fire station. Also, during the January timeframe, due to the lack of snow, Justin had confined his snowmobiling activities to higher elevations where there was snow. Likewise, there was no one, including “visitors”, from the Mountain Addiction affiliation in California between January 4th and February 15th, 2020.

Simply stated, Respondents were not on site during the period of time when the CTC land was disturbed and damaged.

E. RESPONDENTS’ INSPECTION, MEASUREMENTS AND PHOTOGRAPHS DEPICT EVIDENCE OF SPORADIC CUTTING

Since being served with the Notice of Violation Respondents have inspected the area where the tree and shrub damage occurred, have taken measurements, have taken photographs and have marked GPS coordinates at the locations where the larger trees have been cut. Significantly, in most of the areas where trees were cut, especially the larger trees, there would have been no reason for tree removal for the purpose of snow cat or any other type of snow vehicle access. By way of example, the spacing between the larger trees that were cut and the next closest trees ranged between 18 to 25 feet, an area clearly wide enough for a snow cat to

maneuver without the necessity of having to remove a tree. The spacing of the trees was wide enough to allow ready access throughout the forest. Thus, there was no reason or need to remove trees. Even if that were not the case, Respondents had no incentive, need or necessity to blaze a new trail as discussed below.

RESPONSE TO TRPA STATED FACTS

Pursuant to Rule of Procedure 9.8.3 Respondents' reply to each of TRPA's stated facts are as follows.

A. Responding parties admit the following facts as qualified by their comments in italics:

- (1) In 2018, Placer County issued a building permit to Mountain Addiction for a single-family addition that included 3500 SF of living space and 7000 SF of garage/storage. The project is located adjacent to the south side of the CTC Property and includes a rear garage door. Justin Sheaff was both the representative for Mountain Addiction and the main contact for this project. *The project also has four front garage doors.*
- (2) Neighboring property owners raised concerns that this single-family home was going to be converted to a commercial snowmobile retreat. *A single family home was not being converted in that there was no pre-existing home on the property. In addition, the concerns of the neighboring property owners was not that the residence was being constructed as a commercial snowmobile retreat; it was that the residence was being constructed to house a commercial snowmobile rental facility.*
- (3) The disturbance was caused by a snow cat. *The disturbance shown in the photographs could have been caused by either a snow cat, a UTV-side by side or a snowmobile – several of which are utilized in the area.*
- (4) On February 6, 2020, TRPA staff inspected the site and found that approximately 35 live trees of various sizes were cut and left.
- (5) On February 6, 2020, TRPA staff discovered that 5 trees between 14 inches dbh to 23 inches dbh were removed without approval by TRPA in violation of TRPA Code Section 61.1.5 and TRPA Code Section 2.3.2.M.
- (6) On March 18, 2020, TRPA issued a Cease and Desist requesting additional information from both Sheaff and Mountain Addiction. Sheaff and Mountain Addiction state that neither party were responsible for the tree cutting and, furthermore, had no knowledge of who could have been responsible. However, in a response letter to the CTC dated April 14, 2020 they state that Sheaff has voluntarily maintained the trails in the winter for the aforementioned uses. *The*

only trails maintained in the winter is the existing bike path which Justin has groomed during the winter. Trail maintenance in the summertime consists of picking up debris and cleaning obstructions in the existing trails which are accessed by hiker and bike riders.

- (7) Sheaff has explained that this is not his permanent residence but rather is a second home for him, his friends, and his business partners with Mountain Addiction to stay when they visit Lake Tahoe. Sheaff has also stated that other residents in the neighborhood have snowmobiled in this area for decades.
 - (8) Justin is a professional snowmobile rider and a firefighter. *Justin is neither a professional snowmobile rider nor a wildland firefighter. He neither races, competes, received compensation, health or other benefits normally associated with the term professional. He is a structural fire fighter assigned to his department's training bureau. His use of chainsaws are confined to cutting into and accessing structures that are on fire.*
 - (9) However, this new tree removal activity only occurred after the Mountain Addiction residence was constructed. *Respondents have no idea when the tree removal activity occurred. As noted, trees were cut in other areas throughout the CTC land. Respondents have no knowledge as to when such cutting took place.*
- B. Respondents deny the following facts as set forth in the Notice of Violation as explained in italics:
- (1) The project includes a rear garage door leading directly out to the CTC property. *The project also includes four front garage doors that lead directly out to a parking area. The rear garage door was not created, designed and constructed for snow cat and/or snowmobile access; it was designed for ventilation.*⁵
 - (2) The residence, including the 7000 SF garage used for snow cat and snowmobile storage, is not the typical residence in this area. *Respondents are not totally familiar with all of the residences in the area. However, the only thing that may be unique about Mountain Addiction's residence is the large garage.*
 - (3) A trail system exists on the CTC Property for snow cat and snowmobile access by Sheaff and Mountain Addiction. *The trail system on the CTC property was in existence long before Respondents' bought their property and was, and is, for use by the general public for many purposes. The trail system is not used for snow cat access by Respondents. The trail system has been used for snowshoeing, cross country skiing and snowmobile access by the general public at least back to*

⁵ See Appendix No. 4 (Mountain Addiction plans on file with TRPA)

1980. Moreover, Respondents have never used the CTC Property for snow cat grooming or snowmobile grooming. Justin has groomed only the existing trails and the bike path primarily for snowshoeing and/or cross country skiing access during the winter. He has never groomed any area on the CTC land for snowmobiling or any other activity. Snowmobilers, once they have gained access to the CTC property, fairly much go anywhere they please.

- (4) *The tree removal activities appeared to be done by someone with tree cutting experience in order to improve snowmobile access on that trail system and making the trail large enough for the snow cat owned by Sheaf to now access and groom a larger trail system above the Mountain Addiction property. Neither Justin nor Mountain Addiction use any trails on the property during the winter other than the existing hiking path trail and the bike trail which Justin has groomed for snowshoeing and cross country skiing activities. In all the years prior to Mountain Addiction owning the property and since that time, neither Justin, nor others to his knowledge, have ever had a problem accessing the property for snowmobiling. There is no reason for a snow cat to access any of the area where trees were cut as snowmobilers have freedom of access throughout the forest. The cutting of the trees at the locations depicted is not consistent with a viable trail for either activity.*
- (5) *The tree removal activity occurred while the property was occupied with visitors. There were no “visitors” on the property in the January and February timeframe during which the trees were cut. Mountain Addiction had no visitors there and Justin had no visitors there. Justin, other than perhaps occasionally during the evening hours, was not at the property from January 10, 2020 through February 2, 2020 as he was totally tied up with business related activities and his job as a fire fighter.*
- (6) *While the CTC property is a popular snowmobile area for residents, the driveway for the Mountain Addiction property is located on one of the access points. Some residents in the neighborhood have expressed that due to the construction of the driveway leading to Mountain Addiction’s private residence, they concluded that this access is no longer available for public use. Justin is aware of a few neighboring property owners who believe that a commercial snowmobile rental operation is taking place on the property. Perhaps, those individuals have concluded that they no longer have public access to the CTC Property. Notwithstanding the perception of those property owners, Respondents have kept the trail system opened and have maintained a trail running parallel to their driveway that accesses the trail system and CTC Property. That trail is used frequently by members of the general public.*

(7) TRPA has received no response to its settlement proposal. *Respondents forwarded their response to TRPA's settlement proposal in the form of an email.*⁶

RESPONDING PARTY'S DEFENSE

The CTC reported that its property had been damaged in late January, 2020 by snow cat access behind the Mountain Addition residence. At the time, Justin was not present at the property. He was teaching avalanche classes, had business obligations and was performing his duties at the fire station between the timeframe of January 10th through February 2nd, 2020. Mountain Addiction, including its associates, were in Texas during this time period. There were no "visitors" at the property. While it is true that Justin owns a snow cat, no one had authorization from Mountain Addiction or Justin to use the snow cat during the time period in question.

CTC stated that its inspection in late January showed evidence of disturbance to vegetation caused by a snow cat including tracks leading to the Mountain Addiction property. The location of the snow tracks was not disclosed. However, the photographs of the tracks are consistent with the tracks of UTV-side by sides, many of which are owned and utilized by residents in the area. Justin is aware of at least three neighboring individuals who live in the area that own UTV-side by sides and use them on CTC Property and has observed as many as three to six different UTV-side by sides on the property over the years.

Justin informed CTC personnel that he had in fact maintained the *existing* trail system for the many users of the CTC land and USFS land. The existing trail system is well defined and consists of the well marked foot paths and the newly built bike path. See Appendix 6, Ex. 6.G, 6.H. However, the only trails Justin has maintained in the winter is the existing trail from Old County Road which leads to the bike path and the bike path itself. The maintenance consisted of wintertime grooming of the trail from Old County Road to the bike path and the bike path itself, and nothing else off trail and, in the summertime, general stewardship, removing debris from the trail system and keeping the pathways clear. Such maintenance at no time included either cutting down or trimming of trees.

After issuance of the Cease and Desist Order, Respondents, through their attorney, contacted TRPA and forwarded a letter to CTC which among other things explained that neither Justin nor Mountain Addiction were responsible for the tree cutting and had no knowledge of who was responsible.⁷ They explained that the trails that Justin had maintained, at least during the winter of 2018-2019, consisted of the shared use bike trail going from Fulton crescent DR to

⁶ See Appendix No. 2 (Email to John Marshall dated April 28, 2020)

⁷ See Appendix No. 3 (Letter to CTC dated April 14, 2020) In its response letter to CTC, Respondents' attorney candidly explained and disclosed the following: "Our understanding is that the Conservancy land has been used extensively over the years by members of the general public, i.e., for jogging, hiking, mountain bike riding and dirt bike riding during the summer as well as hiking, cross-country skiing, snowshoeing and snowmobiling during the winter. We understand that the property has been used extensively by neighboring residents in the area and by the public at large. Our further understanding is that the trails are maintained during the summer and that Justin has voluntarily maintained the trails during the winter for the aforementioned uses. The nearby residents as well as the general public have been highly appreciative of the trail maintenance."

the staging area at HWY 28. The trails were maintained to provide use for all types of recreational users.

Notwithstanding the foregoing, snowmobilers readily access several areas in the “back country” and are not confined to, nor do they need, a trail system. In fact, quite the opposite is true. Indeed, in Justin’s experience, snowmobilers do not use or even access groomed trails in the area. Instead, they access the general forest itself which has wide open space as opposed to being confined to any sort of a trail system

Contrary to the assertion contained in the Notice of Violation, the tree removal activity did not occur while the Mountain Addiction residence was occupied with visitors. In fact, as noted, both Justin and Mountain Addiction affiliates were out of the area during the time period in question. Further, neither Justin nor Mountain Addiction had any friends or associates visit the Mountain Addiction property during this timeframe. In fact, Justin did most of his snowmobiling this past winter in the higher elevations due to the scant snowfall in the lower elevations. As was obvious to Lake Tahoe residents in early winter, snow levels in the region were minimal. Snow depth reports for the month of January showed less than average accumulations in the area. In February, snow in the Tahoe basin was virtually non-existent. The TRPA and CTC photos taken in early February show that the snow accumulations on CTC land were scant. See Appendix No. 5, Ex. 5.A. through 5.T.

In an effort to point a finger directly at Justin, TRPA staff has opined that the tree removal activities appear (1) to have been performed by someone with tree cutting experience, (2) in order to improve snowmobile access on that trail system and (3) making the trail large enough for the snow cat. These opinions, which are not only conclusionary in nature, but also based on speculation, do not reference any supporting evidence. By way of example, TRPA asserts that Justin, because he works for Cal Fire, must be an experienced chain saw user. However, cutting trees with a chain saw is a frequent occurrence performed by many individuals throughout the Lake Tahoe basin. Hundreds, if not thousands, of residents in the Lake Tahoe area own chain saws and cut down trees for fuel, defensible space, residential building purposes and/or upon arborist recommendations. It is also worth noting that Justin’s training and experience in using a chain saw is confined to cut holes (ventilate) structural roofs, not falling trees.

Next, TRPA or CTC staff assert that the tree removal activities appear to have been undertaken for the purpose of improving snowmobile access on the trail system. However, Respondents have never created a new trail or cut down trees for such a purpose. As noted, snowmobilers do not need a trail system for access. Snowmobilers are able to “free wheel” throughout the forest without having to resort to a trail system. They need not, nor would they be inclined to, use a trail system frequented by cross country skiers, snowshoers or hikers. Thus, there was no reason, motivation or rationale to “improve” access. For snowshoers, cross country skiers and snowmobiles, they already had access from Old County Road to the existing trail system which connected to the bike/cross country trail. For snowmobilers they already had freedom of access through the trail on the Mountain Addiction property and onto the forest located on CTC and USFS lands. Moreover, various photos taken by TRPA clearly demonstrate

either open areas in the forest which would not necessitate tree removal to gain access or, alternatively, dense areas of the forest in which tree removal did not provide or enhance any type of access. See for example, photos in Appendix No. 5 (TRPA and CTC photos), Ex. 5.A. through 5.E., 5.H. through 5.N. and 5.Q through 5.S.

Lastly, TRPA staff asserts that trees were cut to make a trail large enough for a snow cat. However, the photographs of the stumps show that not to be the case. In areas where stumps exist, there were widths of open forest ranging 18-25 feet that would be ample room for a snow cat to maneuver without the necessity of having to cut down a tree. See Appendix No. 6 (Respondents' photos), Ex. 6.I. through 6.M., 6.R. through 6.Z. These photos, depicting areas where large trees were cut down show widths of 18 feet, 20 feet, 20.5 feet and 24 feet. Justin's snow cat is 12' wide and has been used on the property for 7+ years. In virtually every area where large trees were cut there would have been ample room for his snow cat to traverse without the necessity of removing a tree. There simply would have been no reason to cut down a tree in these wide-open areas as depicted in the photographs. Also, in TRPA's and CTC's photographs which depict stumps of cut trees there are several large rocks larger than the stumps that were left in the "supposed" pathway that would be an impediment either to the movement of a snow cat and/or having a groomed trail. See Appendix No. 5 (TRPA and CTC photos), Ex. 5.I., 5.K. and 5.P. Thus, staff's assertion that Respondents were trying to make a trail large enough for a snow cat is contradicted by the actual facts. The location of the large rocks in the area suggest that it would not be an ideal spot for a trail system as speculated by CTC personnel. Actual photographic evidence submitted by TRPA and CTC, *coupled with the physical evidence*, do not support the conjecture that trees were cut to make a trail large enough for a snow cat.

To summarize, while it is clear that anyone with knowledge of how to operate a chain saw could have cut down trees, the fact remains that neither Justin nor Mountain Addiction had any reason, motive or rationale to do so to "improve" snowmobile access. First, Respondents did not need or would even use such access. Second, the areas in question where trees had been cut were already wide enough for snow cat access *without the necessity to remove trees* as clearly depicted in the photographs. See Appendix No. 5 (TRPA and CTC photos), Ex. 5.A. through 5.E., 5.H. through 5.N. and 5.Q. through 5.S.; also see Appendix No. 6 (Respondents' photos), Ex. 6.I., 6.K., 6.L. Finally, as noted, in the areas where trees were cut there were large fallen dead trees and large boulders that would have rendered snow cat passage untenable.

In referencing a topic totally unrelated to the Notice of Violation TRPA asserts that the Mountain Addiction property is located on one of the access points to CTC and USFS lands and that residents in the neighborhood have "expressed that due to the construction of the driveway..., they concluded that this access is no longer available for public use." Mountain Addiction is uncertain as to TRPA's motives in making this assertion. Perhaps the motive is to attack the integrity of Justin and/or Mountain Addiction. Nonetheless, the inuendo suggested by the assertion is not supported factually. Mountain Addiction has taken action to accommodate public access. It has constructed and made available to the public an access trail directly from the location of its driveway on Old County Road that runs parallel to the driveway and which connects to the existing trails on the CTC land. Neither Justin nor Mountain Addiction have

discouraged public use of the property. In fact, residents, Lake Tahoe locals and out of the area visitors regularly frequent the property on a year-round basis with no impediments whatsoever to such use having been created or employed by Respondents.

CONCLUSION

For all the reasons above stated, it is clear that Respondents are not responsible for the unauthorized tree removal on CTC land and that they have not violated the TRPA Code of Ordinances. The conclusions reached by TRPA and CTC which casts suspicion on Respondents are not only based upon pure speculation, but are also wholly unsupported by the facts. For example:

1. As to the theory that the trees were cut during January when there were visitors on the property, neither Justin nor Mountain Addiction people were on site;
2. Regarding the assertion that the disturbance in the forest were near snow cat tracks, the tracks discovered were consistent with tracks of 4x4s and/or snowmobiles. Moreover, there was disturbance in areas where there were no tracks as clearly shown by the photographs;
3. As to the assertion that Justin maintains the trails for snowmobilers, the only trails maintained by him were the existing main trail on CTC Property and the bike trail and this trail maintenance was solely for cross country skiers and snowshoers;
4. As to the theory that the trails were cut to gain access for snowmobilers, snowmobilers do not need a trail system;
5. As to the supposition that Justin is somehow responsible because he has tree cutting experience as a fireman, he wanted to improve access for snowmobilers and he wanted to make a trail large enough for a snow cat, the actual facts are that (a) Justin does not have experience cutting down trees; (b) neither Justin nor Mountain Addiction had any reason, desire or motive to improve access for snowmobiling as freedom of access already existed; and (c) the photographic evidence demonstrate that most all of the trees that were cut were in areas ranging in width of 18 to 25 feet, easily wide enough for a snow cat to travel without the necessity of having cut the trees in question.

Clearly, Respondents had absolutely nothing to do with respect to the allegations levied against them.

Dated: June 2, 2020

PORTER SIMON, PC



By: _____
LOUIS A. BASILE,
Attorney for Respondents

**APPENDIX TO
RESPONSE TO NOTICE OF VIOLATION**

1. Notice of Violation and Complaint filed in U.S. District Court
2. Respondents' attorney's email to John Marshall dated April 28, 2020
3. Respondents' attorney's letter to Jack Matthias of the California Tahoe Conservancy dated April 14, 2020
4. Mountain Addition plans attached to the TRPA file
5. TRPA and CTC photos
6. Respondents' photos

APPENDIX NO. 1



**TAHOE
REGIONAL
PLANNING
AGENCY**

Mail
PO Box 5310
Stateline, NV 89449-5310

Location
128 Market Street
Stateline, NV 89449

Contact
Phone: 775-588-4547
Fax: 775-588-4527
www.trpa.org

May 8, 2020

Justin Sheaff
200 A N Rogers Street
Waxahachie, TX 75165

Mountain Addiction LLC
200 A N Rogers Street
Waxahachie, TX 75165

Send via email to: basile@portersimon.com

**NOTICE OF VIOLATION AND VIOLATION REPORT, UNAUTHORIZED TREE REMOVAL,
CALIFORNIA TAHOE CONSERVANCY PROPERTY, PLACER COUNTY, CALIFORNIA, ASSESSOR
PARCEL NUMBER (APN) 092-010-021 AND 092-010-035.**

Dear Justin Sheaff and Mountain Addiction LLC:

This Notice of Violation is directed to Justin Sheaff and Mountain Addiction LLC. Both Parties are represented by attorney Lou Basile, and so this Notice is being delivered to Mr. Basile on behalf of each of his clients as well as mailed to each party.

(a) Nature of Violation

Pursuant to Article IX of the Tahoe Regional Planning Agency ("TRPA") Rules of Procedure, this Notice of Violation and Violation Report is being issued to Justin Sheaff ("Sheaff") and Mountain Addiction LLC ("Mountain Addiction") for unauthorized tree removal activities on land owned by the State of California and managed by the California Tahoe Conservancy (the "CTC"). The CTC parcels, APN 092-010-021 and 092-010-035 (hereafter referred to as the "CTC Property"), lay uphill and between the Mountain Addiction Property and other public lands owned by the United States and managed by the U.S. Forest Service. Mountain Addiction and the general public use these federal lands for winter activities, including snowmobiling.

(b) Correction of the Violation

The intent of the Rules of Procedure, Article IX, is to promote resolution of violations at the administrative level. The steps necessary to correct the violation are set forth below in the proposed resolution of enforcement action.

(c) Cease & Desist

TRPA previously issued a Cease & Desist Order for the unauthorized activities on the CTC Property on March 18, 2020 to Sheaff and Mountain Addiction.

(d) Show Cause Hearing

A Show Cause Hearing before the TRPA Governing Board will be scheduled during the June 24, 2020 Governing Board meeting beginning at 8:30 a.m. This meeting will be held virtually. In the event that a settlement is reached prior to June 24, 2020, the Show Cause Hearing will be cancelled and the settlement agreement will be submitted to the Governing Board for approval. In the event that any or all parties fail to respond to this Notice of Violation, the Show Cause Hearing will be cancelled and further enforcement action, including the prosecuting a civil complaint in a court of law, may be commenced.

VIOLATION REPORT

**UNAUTHORIZED TREE REMOVAL ACTIVITIES, COUNTRY CLUB ROAD, PLACER COUNTY, CA,
ASSESSORS PARCEL NUMBER (APN) 092-010-021.**

(a) Noticed Party:

Justin Sheaff
200 A N Rogers Street
Waxahachie, TX 75165

Mountain Addiction LLC
200 A N Rogers Street
Waxahachie, TX 75165

(b) Provisions of the Tahoe Regional Planning Compact and the Regional Plan Package
violated:

Tahoe Regional Planning Compact, P.L. 96-551, 94 Stat. 3233 (1980), Art. V(g), VI(b).

TRPA Code of Ordinances:

- TRPA Code Section 61.1.5: Removal of trees greater than 14 inches dbh shall require approval by TRPA.
- TRPA Code Section 2.3.2.M: The tree removal is a non-exempt project and must be reviewed by TRPA.

(c) Statement of Facts:

In 2018, Placer County issued a building permit to Mountain Addiction for a single-family addition that included 3500 SF of living space and 7000 SF of garage/storage. The project is located adjacent to the south side of the CTC Property and includes a rear garage door leading directly out to the CTC Property for snow cat and snowmobile access. Sheaff was both the representative for Mountain Addiction and the main contact for this project.

Placer County, CTC, neighboring property owners, and TRPA staff raised concerns that this single-family home was being converted to a commercial snowmobile retreat. The residence, including the 7000 SF garage used for snow cat and snowmobile storage, is not the typical residence in this area.

In late January 2020, TRPA received information from the California Tahoe Conservancy (CTC) that the CTC Property had been damaged by snow cat access behind the residence on the Mountain Addiction Property. The photos taken during the CTC inspection showed evidence of disturbance caused by the snow cat including tracks leading to the Mountain Addiction Property where the snow cat was stored.

On February 6, 2020, TRPA staff inspected the site and found that approximately 35 live trees of various sizes were cut and left along a trail system on the CTC Property used for snow cat and snowmobile access by Sheaff and Mountain Addiction. At that time, TRPA staff discovered that 5 trees between 14 inches dbh to 23 inches dbh were removed without approval by TRPA in violation of TRPA Code Section 61.1.5 (Removal of trees greater than 14 inches dbh shall require approval by TRPA) and TRPA Code Section 2.3.2.M (The tree removal is a non-exempt project and must be reviewed by TRPA). The tree removal activities appeared to be done by someone with tree cutting experience in order to improve snowmobile access on that trail system and making the trail large enough for the snow cat owned by Sheaf to now access and groom a larger trail system above the Mountain Addiction property.

On March 18, 2020, TRPA issued a Cease and Desist requesting additional information from both Sheaff and Mountain Addiction. Sheaff and Mountain Addiction state that neither party were responsible for the tree cutting and, furthermore, had no knowledge of who could have been responsible. However, in a response letter to the CTC dated April 14, 2020 they state that Sheaff has voluntarily maintained the trails in the winter for the aforementioned uses.

Sheaff, who is a Cal Fire wildland firefighter and a professional snowmobile rider, has explained that this is not his permanent residence but rather is a second home for him, his friends, and his business partners with Mountain Addiction to stay when they visit Lake Tahoe. Sheaff has also stated that other residents in the neighborhood have snowmobiled in this area for decades. However, this new tree removal activity only occurred after the Mountain Addiction residence was constructed and is now occupied with visitors. While the CTC property is a popular snowmobile area for residents, the driveway for the Mountain Addiction property is located on one of the access points. Some residents in the neighborhood have expressed that due to the construction of the driveway leading to Mountain Addiction's private residence, they concluded that this access is no longer available for public use.

On April 27, 2020, TRPA sent a settlement offer to both Sheaff and Mountain Addiction to resolve the unauthorized activities with TRPA. The settlement offer included a \$25,000 monetary penalty (\$5,000 per tree over 14 inches dbh). TRPA has received no response to this proposal.

(d) Documentary Evidence:

The most relevant documentation to this Notice of Violation is hyperlinked in the following list:

- [Public Law 96-551; Tahoe Regional Planning Compact](#)
- [TRPA Rules of Procedure, Article IX, Compliance Procedures](#)
- [TRPA Code of Ordinances](#)

Additional documentary evidence supporting the determination of a violation, including written statements and photographs, are in TRPA's possession and may be requested via electronic mail or reviewed at the TRPA office in Stateline, Nevada.

(e) Proposed Resolution of Enforcement Action:

The Tahoe Regional Planning Compact provides for substantial penalties for violations of TRPA ordinances or regulations.

Article VI of the Compact States:

Any person who violates any ordinance or regulation of the Agency is subject to a civil penalty not to exceed \$5,000 and an additional civil penalty not to exceed \$5,000 per day, for each day on which a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.

As a means of resolving this matter, TRPA proposes the following resolution:

1. The Settling Parties (Justin Sheaff and Mountain Addiction LLC.) shall pay TRPA \$25,000 within 30 days of Governing Board approval of this Settlement Agreement.

(f) Governing Board Show Cause Hearing

A Show Cause Hearing before the TRPA Governing Board and its Legal Committee has been scheduled for the June 24, 2020, Governing Board virtual meeting. The Legal Committee commences at 8:30 a.m. At the conclusion of the hearing the Legal Committee will recommend to the Governing Board a course of action to resolve this matter. The Legal Committee may recommend that the Governing Board affirm, modify, or withdraw the Executive Director's determination of violation, authorize legal counsel to pursue judicial remedies, determine and offer a proposed resolution, or recommend such other action as deemed appropriate by the Legal Committee. The Governing Board will consider the matter after the 9:30 a.m. commencement of the Governing Board meeting.

If the Settling Parties decide to pursue a settlement of the violations, the Show Cause Hearing will be stayed pending the outcome of the settlement efforts. Such a stay will occur if the Settling Parties provide a response as set forth in subsection (h) below. Settlement of this matter, by acceptance of the above-proposed resolution or an alternative proposal agreed upon by all parties, is the preferred option. Any settlement reached by the parties will require review and approval by the Legal Committee and the Governing Board.

(g) Response Due Date:

Per Article IX of the TRPA Rules of Procedure (enclosed), you may serve a written response within twenty-one (21) calendar days of the date of this Notice of Violation.

(h) Election to Pursue Settlement:

Pursuant to TRPA Rule of Procedure 9.10, if you wish to pursue settlement of this violation your response must include acceptance of or a response to the settlement proposed above. Your response must also include a waiver of the Statute of Limitations (copy enclosed). If TRPA does not receive acceptance of or a response to the proposed settlement by May 22, 2020 the Agency will consider settlement discontinued, and the scheduled Show Cause Hearing will proceed at the June 24, 2020 TRPA Governing Board.

If you have questions, I may be reached at 775-589-5281, 8:00 a.m. through 5:00 p.m., Monday through Friday.

Sincerely,



Steve Sweet
Code Compliance Program Manager

1 JOHN L. MARSHALL (Cal. Bar No. 145570)
TAHOE REGIONAL PLANNING AGENCY
2 128 Market Street
Stateline Nevada, 89449
3 Tel: (775) 303-4882
jmarshall@trpa.org

4 Attorney for Plaintiff
5 Tahoe Regional Planning Agency

6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8

9	TAHOE REGIONAL PLANNING AGENCY,)	Case No.
)	
10	Plaintiff,)	
)	
11	vs.)	COMPLAINT FOR CIVIL PENALTIES
)	
12	MOUNTAIN ADDICTION LLC, JUSTIN)	
)	
13	SHEAF,)	
)	
14	Defendants.)	
)	
15)	

16 I. INTRODUCTION

17
18 1. Plaintiff Tahoe Regional Planning Agency (“TRPA”) files this action against
19 Defendants Mountain Addiction, LLC and Justin Sheaf (hereinafter collectively referred to as
20 “Mountain Addiction”) for civil penalties for multiple violations of the Tahoe Regional Planning
21 Compact, Pub. Law 96-551, 94 Stat. 3233, Cal. Gov. Code §§ 66801 et seq., Nev. Rev. Stat. §§
22 277.200 et seq. (1980) (“Compact”), and its implementing Code of Ordinances (“Code”) arising
23 out of their unauthorized cutting trees on public land to improve their access for power-oriented
24 winter sports, primarily snowmobiling.

1 II. JURISDICTION AND VENUE

2 2. This Court has jurisdiction over this matter pursuant to: (a) Article VI(j) of the
3 Compact; and (b) 28 U.S.C. § 1331(a) in that this civil action arises under the laws of the United
4 States.

5 3. Venue is proper in this Court pursuant to Article VI(j)(2)(A) of the Compact in
6 that for a civil action challenging an activity by a person undertaken upon a parcel of real
7 property, venue lies in the federal judicial district where the real property is located. The
8 activities underlying this enforcement action occurred on real property located within the United
9 States District Court for the Eastern District of California. Venue is also proper in this Court
10 pursuant to 28 U.S.C. § 1391(b) in that TRPA is informed and the defendant Sheaf resides in this
11 District, and the events and omissions giving rise to this action occurred in this District.

12 III. PARTIES

13 4. Plaintiff TRPA is a legal entity created by the Compact. The Compact empowers
14 TRPA to adopt a regional plan and implementing ordinances for land use in the Tahoe Region.
15 Article VI of the Compact authorizes TRPA to bring enforcement actions to ensure compliance
16 with the regional plan, implementing ordinances, rules, regulations, and policies.

17 5. Defendant Mountain Addiction, LLC, a Texas limited liability corporation, is the
18 owner of record of real property located at 585 Old County Road, Placer County, California,
19 having Assessor’s Parcel Number (“APN”) 092-290-003 (hereinafter the “Mountain Addiction
20 Property”). Mountain Addiction, LLC is a corporation of Texas with registration located at
21 200A N. Rogers Street, Waxahachie, TX 75165.

1 TRPA develop regulations to attain and maintain the environmental targets established by the
2 thresholds.

3 11. In 1987, TRPA enacted its Regional Plan including the TRPA Code, a set of
4 regulations through which the thresholds can be attained and maintained. The Code provides a
5 comprehensive regulatory system that benefits residents and visitors alike by ensuring a high
6 quality of environmental standards in the Tahoe Region. Tahoe residents especially benefit from
7 the TRPA Code because its regulations significantly enhance property values.

8 12. Pursuant to the Compact and the Code, TRPA must approve all projects in the
9 Tahoe Region. Article II(h) of the Compact defines a “project” as “an activity undertaken by
10 any person . . . if the activity may substantially affect the land, water, air, space or any other
11 natural resources of the region.” Chapter 4 of the TRPA Code requires that all projects in the
12 Tahoe Region obtain a TRPA permit prior to authorization unless the project is specifically
13 identified as “exempt” or “qualified exempt”. Section 5.2 of Article V of the TRPA’s Rules of
14 Procedure require that each person undertaking a project in the Tahoe Basin establish an interest
15 in the real property upon which the project is undertaken.

16 13. TRPA Code Chapter 61 contains specific regulations concerning trees in the
17 Tahoe Region. These regulations ensure that activities in the Tahoe Region impacting trees are
18 done so in a manner consistent with the thresholds and which does not adversely affect forest
19 health or the ecological integrity of the Tahoe Region.

20 14. TRPA Code specifies that the removal of live trees having a diameter-at-breast
21 height (“dbh”) of greater than 14 inches requires a TRPA permit.

22 15. TRPA reviews permit applications to remove live trees having a dbh of 14 inches
23 or greater in accordance with Chapter 61 of the TRPA Code, entitled “Tree Removal.” The term
24

1 “tree removal” is defined in Chapter 2 of the TRPA Code as “the cutting down, killing, or
2 damaging materially, a tree.” Subsection 61.5 of the TRPA Code contains an exclusive list of
3 allowable reasons for tree removal.

4 16. The Mountain Addiction Property is adjacent to over 500 acres of land owned by
5 the State of California and managed by the California Tahoe Conservancy (the “CTC”). The
6 CTC parcels, APN 092-010-021 and 092-010-035 (hereafter referred to as the “CTC Property”),
7 lay uphill and between the Mountain Addiction Property and other public lands owned by the
8 United States and managed by the U.S. Forest Service. Mountain Addiction and the general
9 public use these federal lands for winter activities, including snowmobiling. Mountain Addiction
10 accesses the public lands by crossing the CTC Property.

11 17. In 2018, Mountain Addiction, LLC built a single-family addition to an existing
12 residence that resulted in a completed single structure with 3,500 square feet (“SF”) of living
13 space and 7,000 SF of garage and storage. The structure is located on the northwest corner of the
14 Mountain Addiction Property and adjacent to the east side of the CTC Property. The structure
15 includes a rear garage door and ramp leading directly to the CTC Property for snow cat and
16 snowmobile access. Defendant Sheaff represented Mountain Addiction, LLC during the
17 permitting for this project.

18 18. In late January 2020, TRPA received information from the CTC that the CTC
19 Property had been damaged by snow cat access behind the residence of Mountain Addiction,
20 LLC. On February 6, 2020, TRPA staff inspected the site and found that at least 35 live trees of
21 various sizes were cut, creating an on-snow trail on the CTC Property used for snow cat and
22 snowmobile access from the Mountain Addiction residence. Of the trees felled, five trees were
23
24

1 greater than 14 inches dbh. Stumps of the cut trees were painted black apparently to disguise
2 their recent felling.

3 19. This trail creation activity also resulted in disturbance to vegetation and soils on
4 the CTC Property. A map illustrating the extensive activities along the access trail on CTC
5 Property is attached hereto as Exhibit A.

6 20. The apparent purpose of the tree removal was to establish a snow cat/mobile route
7 to access the existing trail system at elevation above the Mountain Addiction residence on public
8 lands.

9 21. TRPA did not issue any permit to any person or entity to cut, remove, or
10 materially damage trees on the CTC Property. CTC informs TRPA that it has not authorized any
11 party to cut trees on the CTC Property.

12 22. The felling of trees on the CTC Property improves Mountain Addiction's access
13 to public lands and benefits the Mountain Addiction Property.

14 23. TRPA is informed and believes that Justin Sheaf is or was employed by the
15 California Department of Fire and Forestry ("Cal Fire") as a Heavy Equipment Operator. TRPA
16 is informed and believe that Sheaf is familiar with use of chainsaws and the felling of trees.

17 24. The trees felled on the CTC Property were cut by an experienced person.

18 25. Justin Sheaf has admitted to being present on the CTC Property when the snow
19 cat was in use between the Mountain Addiction residence and the public lands.

20 26. Justin Sheaf admits that he conducts "maintenance" on the CTC property during
21 the winter for his winter use purposes.

22 27. TRPA is informed and believes that as a wildland fire fighter, Defendant Sheaf
23 has the necessary knowledge and experience to cut the trees on the CTC Property.

1 28. Based on the foregoing, TRPA alleges that it is more likely than not that Justin
2 Sheaf for himself and on behalf of Mountain Addiction, LLC either himself cut or directed others
3 to cut the five trees greater than 14 inches dbh on the CTC Property.

4 29. Under the Compact, any person who violates the Compact, TRPA ordinance, or
5 regulation is subject to a civil penalty not to exceed \$5,000 per violation per day the violation
6 persists.

7 30. The Compact authorizes TRPA to bring enforcement actions and to seek civil
8 penalties. TRPA files this action within the applicable limitations period in Compact Article
9 V(j).

10 V. FIRST CAUSE OF ACTION
11 (FOR UNAUTHORIZED MATERIAL DAMAGE TO TREES)

12 31. TRPA incorporates herein by reference the allegations of paragraphs 1 through
13 30.

14 32. Defendants Mountain Addiction, LLC and Justin Sheaf cut, directed, or were
15 responsible for the felling of the trees on the CTC Property including the five trees 14 inches dbh
16 or greater.

17 33. The Compact and Section 4.7 of the TRPA Code requires that all projects in the
18 Tahoe Region obtain prior TRPA review and approval. Article II(h) of the Compact defines
19 “Project” as “an activity undertaken by any person . . . if the activity may substantially affect the
20 land, water, air, space, or any other natural resource of the region.” The cutting of the five trees
21 on the CTC Property may substantially affect the land, water, air, space, and other natural
22 resources in the Tahoe Region. The cutting of the five trees therefore required TRPA review
23 and approval.
24

1 34. The cutting of trees on the CTC Property was not reviewed or authorized by
2 TRPA. No TRPA permit was sought or issued for the activity. Therefore, the cutting activity on
3 the CTC Property constitutes a violation of TRPA Code Section 4.7.

4 35. Pursuant to Sections 61.3 and 61.5 of its Code of Ordinances, TRPA must review
5 and approve the cutting of trees of each live tree in the Tahoe Region having a dbh of 14 inches
6 or greater.

7 36. Section 5.2 of Article V of the TRPA's Rule of Procedure require that each
8 person undertaking a project in the Tahoe Basin establish an interest in the real property upon
9 which the project is undertaken. Defendants Mountain Addiction, LLC and Justin Sheaf possess
10 no real property interest in the CTC Property. Defendants' cutting activity on the CTC Property
11 therefore violated Section 5.2 of Article V of TRPA's Rules of Procedure.

12 37. Defendants Mountain Addiction, LLC and Justin Sheaf violated the Compact and
13 TRPA Code and are subject to civil penalties pursuant to Article VI(k). Defendants Mountain
14 Addiction, LLC and Justin Sheaf are subject to civil penalties for each individual violation of the
15 Compact and TRPA Code as a result the cutting of trees on the CTC Property.

16 38. The violations caused by the unauthorized tree removal from the cutting of trees
17 on the CTC Property are of a continuing nature.

18 39. The violation caused by the unauthorized tree cutting on the CTC Property were
19 either willful or the result of gross negligence.

20 40. A civil penalty against Defendants Mountain Addiction, LLC and Justin Sheaf is
21 necessary to deter illegal conduct, redress the environmental harm, and to disgorge the economic
22 benefit attributable to the violations.

1 REQUEST FOR RELIEF

2 A. For each individual violation, a penalty assessed against Defendants Mountain
3 Addiction, LLC and Justin Sheaf not to exceed \$5,000 per violation per day that the violation
4 persists.

5 B. Reasonable attorneys' fees and costs of suit incurred in this action.

6 C. Such other and further relief as the Court deems just and proper.

7 DATED: May 8, 2020.

8 TAHOE REGIONAL PLANNING AGENCY

9
10 By: /s/ John L. Marshall

11 Attorney for Plaintiff,
12 Tahoe Regional Planning Agency
jmarshall@trpa.org

Exhibit A

APPENDIX NO. 2

Lou Basile

From: Lou Basile
Sent: Tuesday, April 28, 2020 5:14 PM
To: John Marshall
Cc: Steve Sweet
Subject: RE: Mountain Addiction, LLC

Follow Up Flag: Copied to Worldox (Porter Simon Main Documents\080476\47700\EMAIL\00882812.MSG)

John:

I am totally taken back by your proposal and the draft settlement agreement. You and Steve requested that our clients agree to a waiver of the SL relative to TRPA's enforcement proceedings so that you could complete your investigation of this matter. After our clients agreed to the waiver, you then turned right around and inform me that TRPA intends to pursue its enforcement action. Were you simply playing me to buy more time? Your action, on its face, is reprehensible.

Both Justin and I have explained that neither he nor Mountain Addiction had anything to do with the tree cutting. Yet, you propose that they sign a settlement agreement that contains a tacit admission of involvement? Due to ethical requirements, I am forwarding the settlement agreement to our clients. However, unless you can point to some evidence of their involvement, I will strongly recommend to them that they not sign it. I am amenable to further talk, but you will first have to come up with some competent evidence/proof that demonstrate involvement on the part of our clients.



LOUIS A. BASILE
Post Office Box 5339
Tahoe City, CA 96145
530.583.7268 x 4128 | 530.583.7209 fax
basile@portersimon.com | PorterSimon.com



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From: John Marshall <jmarshall@trpa.org>
Sent: Monday, April 27, 2020 8:59 AM
To: Lou Basile <basile@portersimon.com>
Cc: Steve Sweet <ssweet@trpa.org>
Subject: Re: Mountain Addiction, LLC

Lou,

APPENDIX NO. 3

Louis A. Basile
Kelley R. Carroll*†
Steven C. Gross*
Brian C. Hanley*
James L. Porter, Jr.*
James E. Simon
Ravn R. Whittington*



David W. Wolfe*
Ethan J. Birnberg*
Sara D. Davidson

Peter H. Cuttitta, *Of Counsel*
Stephen C. Lieberman, *1941-2016*
Dennis W. De Cuir, *Of Counsel*

† *Certified Specialist in Estate
Planning, Trust & Probate Law
(California Board of Legal
Specialization)*
* *Also licensed in Nevada*

April 14, 2020

VIA EMAIL: jack.matthias@tahoe.ca.gov

California Tahoe Conservancy
Attention: Jack Matthias
1061 Third Street
South Lake Tahoe, California 96150

Re: 585 Old County Road
Placer County APN # 092-290-003

To Whom It May Concern:

This firm represents Mountain Addiction, LLC, owner of the above-referenced property. Over the years, Mountain Addiction has utilized the services of Justin Scheaff as an off-site property manager and caretaker. Justin oversees and renders caretaker services with respect to the residence located on the property.

Most recently, there have been accusations levied against Mountain Addiction, LLC and/or Justin that either or both are responsible for the cutting down of several trees and shrubbery on California Tahoe Conservancy (the "Conservancy") land adjacent to the property owned by Mountain Addiction. Our understanding is that the aforementioned cuttings took place this last winter. Our clients have asked us to contact the Conservancy to address the aforementioned accusations and open up a dialogue regarding the uses by the general public of Conservancy property for the past several decades.

First, and foremost, our clients deny having anything to do with the cutting and/or being involved therein. The principals of Mountain Addiction, LLC do not reside at the property and were quite likely not even in the area during the time of the cutting. Justin denies having anything to do with the cutting or any knowledge relative to any third parties having anything to do with the cutting. In this regard, our clients desire to set the record straight and, moreover, do whatever is necessary to cooperate with the Conservancy in maintaining and/or managing the Conservancy land.

Prior to our firm becoming involved in this matter, Tahoe Regional Planning Agency ("TRPA") contacted Justin to inform him of the tree cutting and, through inuendos, implied that he either was first-hand involved therein or had knowledge thereof. Justin denied involvement. Since, I have been in touch with TRPA's code enforcement officer, Steve Sweet, who provided

{00875822.DOC 1 }

me with both information and the rationale as to why TRPA concluded that Justin was involved. Admittedly, while the factual circumstances seemingly point to Mountain Addiction and/or Justin, the reality is that neither was involved with the tree cutting in any way.

Our understanding is that the Conservancy land has been used extensively over the years by members of the general public, i.e., for jogging, hiking, mountain bike riding and dirt bike riding during the summer as well as hiking, cross-country skiing, snowshoeing and snowmobiling during the winter. We understand that the property has been used extensively by neighboring residents in the area and by the public at large. Our further understanding is that the trails are maintained during the summer and that Justin has voluntarily maintained the trails during the winter for the aforementioned uses. The nearby residents as well as the general public have been highly appreciative of the trail maintenance.

We understand from Mr. Sweet that the Conservancy is concerned that the Conservancy land has been defaced by the perpetrators of the tree cutting. He explained that a rather large quantity of trees and shrubs had been cut down. Our client, and Justin, are concerned and even appalled by the actions of those who were involved in the cutting. Their intent is to use the Conservancy land only in the fashion that it has been used over the years. They, as well as the members of the general public, would certainly hate to see the aforementioned uses being altered in any whatsoever.

We are hopeful that this letter will serve to open a dialogue between the Conservancy and our clients relative to resolving what appears to be a relationship between them which has gotten off on the wrong foot. Apparently because of accusations that were made against Mountain Addiction and Justin which were offensive to them, they immediately got on the defensive which served no purpose whatsoever in fostering a working relationship with the Conservancy.

As you are no doubt aware, Mountain Addiction, LLC's driveway has long served as a gateway to the Conservancy property by recreational users. Mountain Addiction, LLC recognizes the foregoing and perceives that the general public likely has prescriptive rights over its driveway to access the Conservancy property. Since its ownership of its property, it has done nothing to curtail the rights of the general public in this regard. And, they have no intent to do so in the future.

While Mountain Addiction and Justin are aware that a few residents in the area have complained about recreational activities on the Conservancy property, in particular snowmobiling, they are also aware that all of such recreational uses, including snowmobiling, have taken place on the property over the past three decades. Apparently, these few residents have openly suggested that our client has engaged in a commercial snowmobiling operation. That is simply not true. The property owners have used the property for snowmobiling during the winter on a limited basis. The same is true of Justin. Others have accessed the land for the above-described uses, including snowmobiling, as they have over the years.

We assume that Mr. Matthias, who has contacted Justin in the past, is the individual with whom we may open a dialogue. We would appreciate that he or another Conservancy official reach out to us for the purpose of discussing the foregoing and coming to a resolution in an attempt to foster a good neighbor relationship between the Conservancy and our client. We look forward to engaging in a dialogue to that effect.

Very truly yours,



LOUIS A. BASILE

LAB/mw

Cc: Client
John Marshall
Steve Sweet

APPENDIX NO. 4
[Attached to TRPA file]

APPENDIX NO. 5













LEGAL COMMITTEE AGENDA ITEM NO. 4
& AGENDA ITEM NO. 11B



LEGAL COMMITTEE AGENDA ITEM NO. 4
& AGENDA ITEM NO. VI.B



























APPENDIX NO. 6













Main Trail
N 3912.243
W 120 06.144

6.F. (3825)



Main Trail
N 3912, 243
W 120 06.144

6.G. (3826)

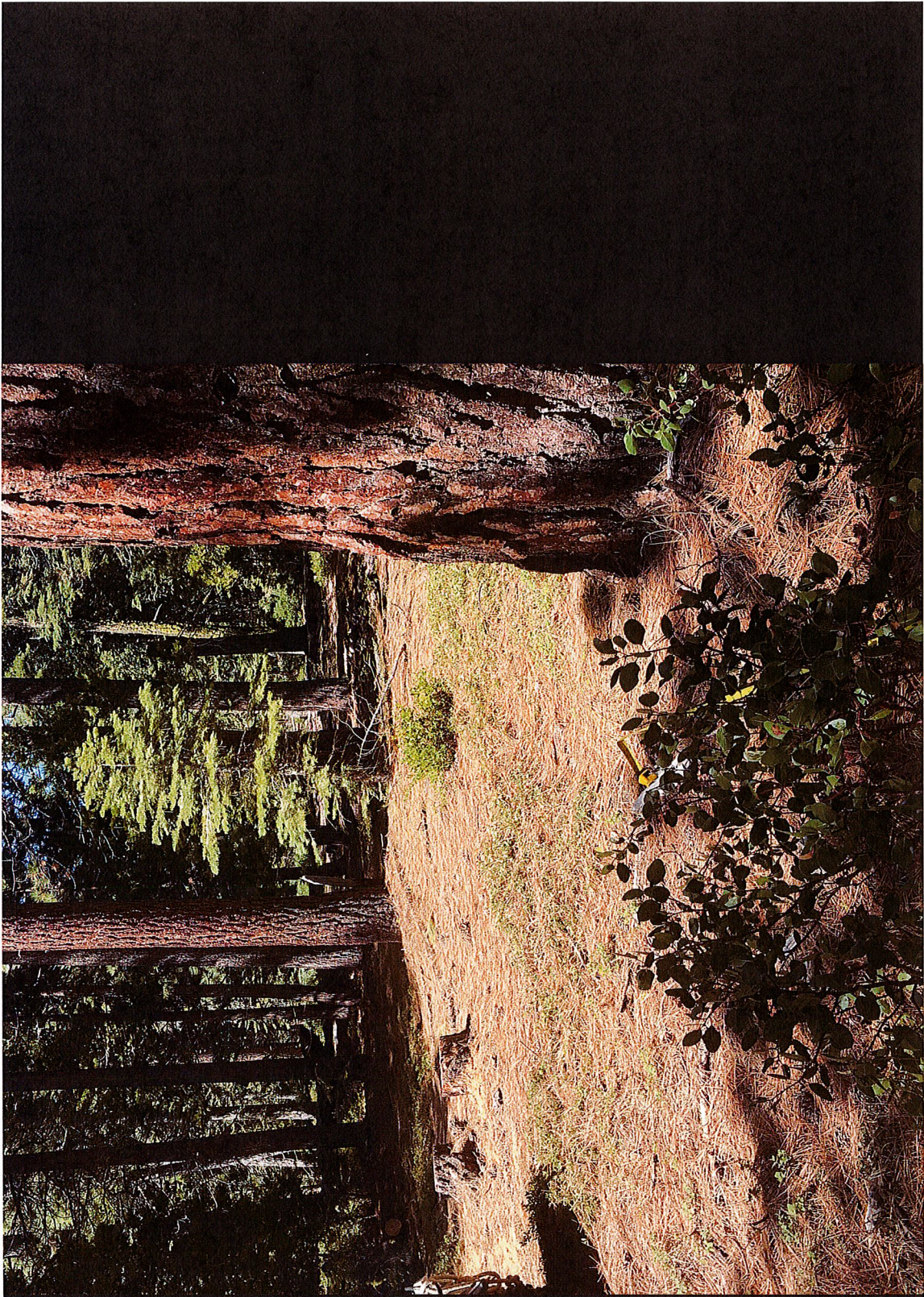


Main Trail

W 39 12.283

W 120 06.167

6.H. (3827)



Cut Trees 1000'
N 39 12.278
W 120 06.281
25' from stump

6.I. (3839)



Cut Trees 1000'
N 39 12.278
W 120 06.281
25' From stump

6.J. (3840)



Cut Trees 1000'
N 39 12. 278
W 120 06. 281
25' From Stump

6.K. (3841)



Cut Trees

W 39 12.290

W 120 06.3576

22' from stump 4' rock

6.I. (3843)



Cut Trees
N 39 12.290
W 120 06.358
22' From Stump 4' rock

6.M. (3845)











Cut tree
N 39.1271
W 120 06.538
18' to stump



Cut Tree
N 39. 1271
W 120 06.538
14' to stump

6.S. (3888)



Cut Tree
N 39 12.361
W 120 06.538
20' to stump



Cut tree
N. 39. 361
W 120 06.538
20' to stump

6.U. (3892)



Office DEPOT
1. D. Damage marks
2. Trail on plot to 20 BR. From
3. Plot trees cut
4. 20 BR. Diameter about 10 inches
5. 25. From stump about 10 inches
6. Cut. From stump about 10 inches
7. Plot cut. At 10 inches in plot 2
8. Plot many other. Diameter from base
9. Plot cut. From stump about 10 inches
10. Plot cut. From stump about 10 inches
11. Plot cut. From stump about 10 inches
12. Plot cut. From stump about 10 inches
13. Plot cut. From stump about 10 inches
14. 20. Between cuts

Cut tree
W 39 12.347
W 120 06.521
205' to stump



Cut tree
N 39 12.347
W 120 06.521
20.5' to stump



Cut tree
N. 39 12.339
W 120 06.516
24' to stump

6.X. (3899)



Cut tree
N 39 12.339
W 120 06.516
24' to stump

6.Y. (3900)



Cut tree

N. 39 12.339

W 120 06-516

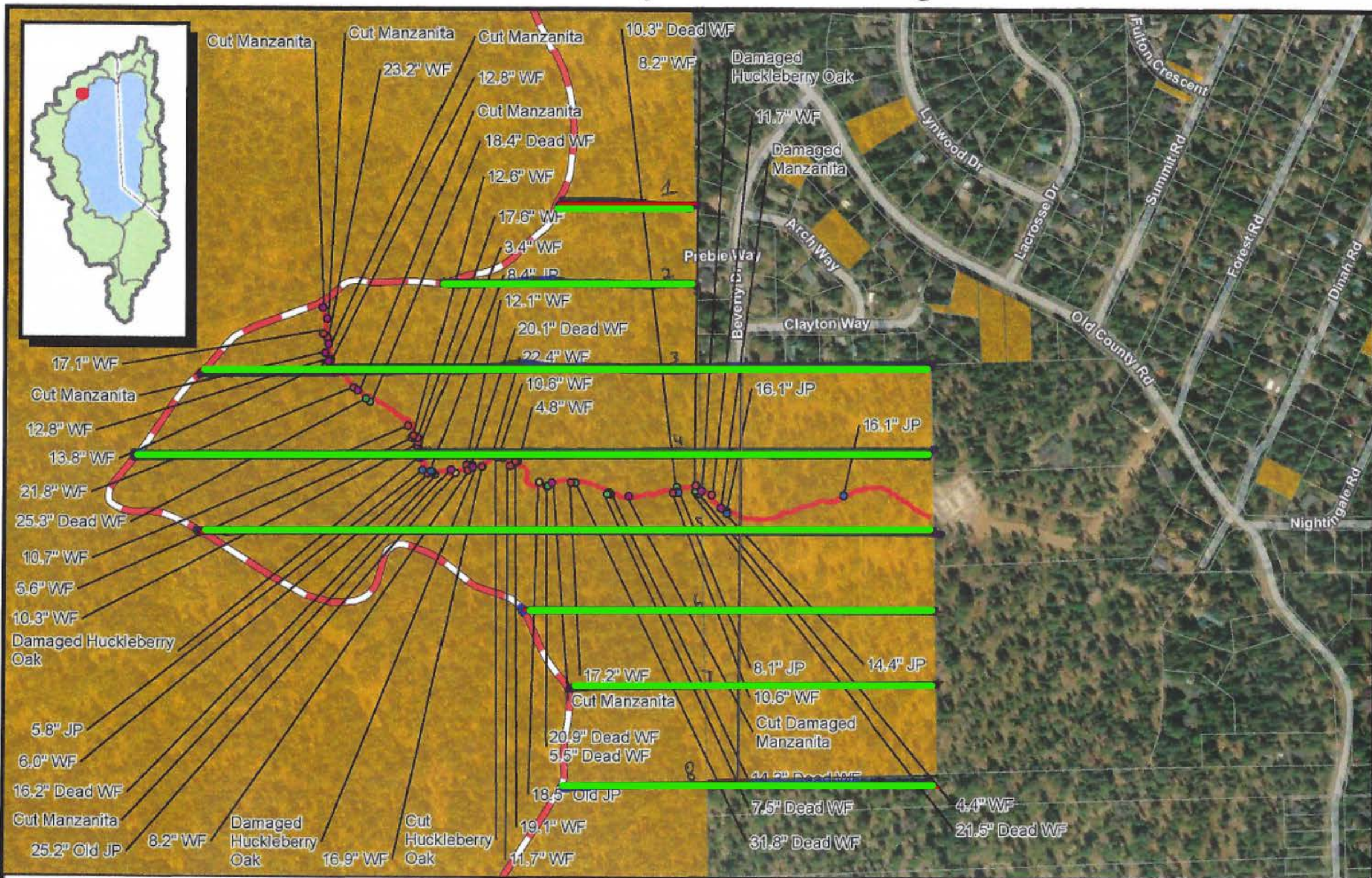
24' to stump

6.Z. (3901)

Attachment E

CTC Property Inspection Transects

Conservancy Resource Damage



- Snow Cat Path (2344 ft)
- Shared_Use_Trail_Realigned_Temp

- Dead White Fir (13)
- Shrub (14)
- Jeffery Pine (6)
- White Fir (29)
- Old Jeffery Pine (2)



California Tahoe Conservancy
February 2020

Map for reference purposes only.

Sources: CTC, ESRI



Attachment F

Site and Building Plans

Fire Safe Setbacks
Reduced Setbacks - reduced per notice

Done for light + air flow
Removal of Panel
as part of TPA
EPL 2018-0807-06
to allow 24" barrels
prevent use as ingress
egress and thus not
a covering area.
Area needs to be
vegetated
MS.

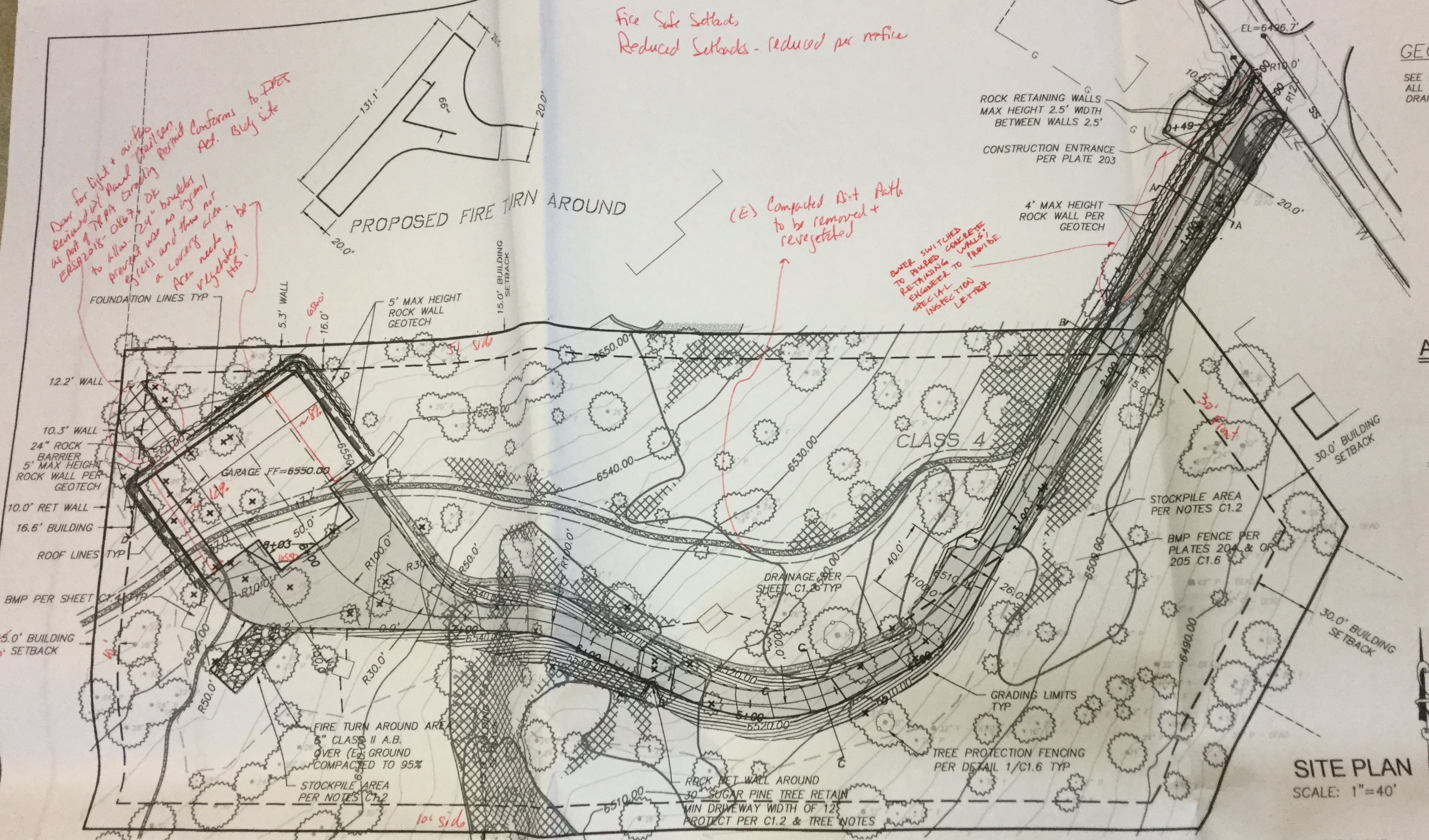
PROPOSED FIRE TURN AROUND

(E) Compacted Dirt Path
to be removed +
revegetated

OWNER SWITCHED
TO PAVED CONCRETE
RETRIVING WALLS
ENGINEER TO PROVIDE
SPECIAL INSPECTION
LETTER

GEOTECH
SEE GEOTECH
ALL SOIL
DRAINAGE

ALL
AR
IP
"S
C
EX



SITE PLAN
SCALE: 1"=40'

MAIN ROAD TO SHOP PROFILE

SSMH #1
STA: 7+69.99 OFF: -23.34L
RIM: 6549.01
SUMP: 6539.35
INV IN: 6539.45 4"
INV IN: 6539.45 4"
INV IN: 6539.45 4"
INV OUT: 6539.35 4"

CLEAN OUT
STA: 7+71.17 OFF: -69.26L
RIM: 6549.66
SUMP: 6545.66
INV OUT: 6545.66 4"
45.95' of 4" @ 13.52%

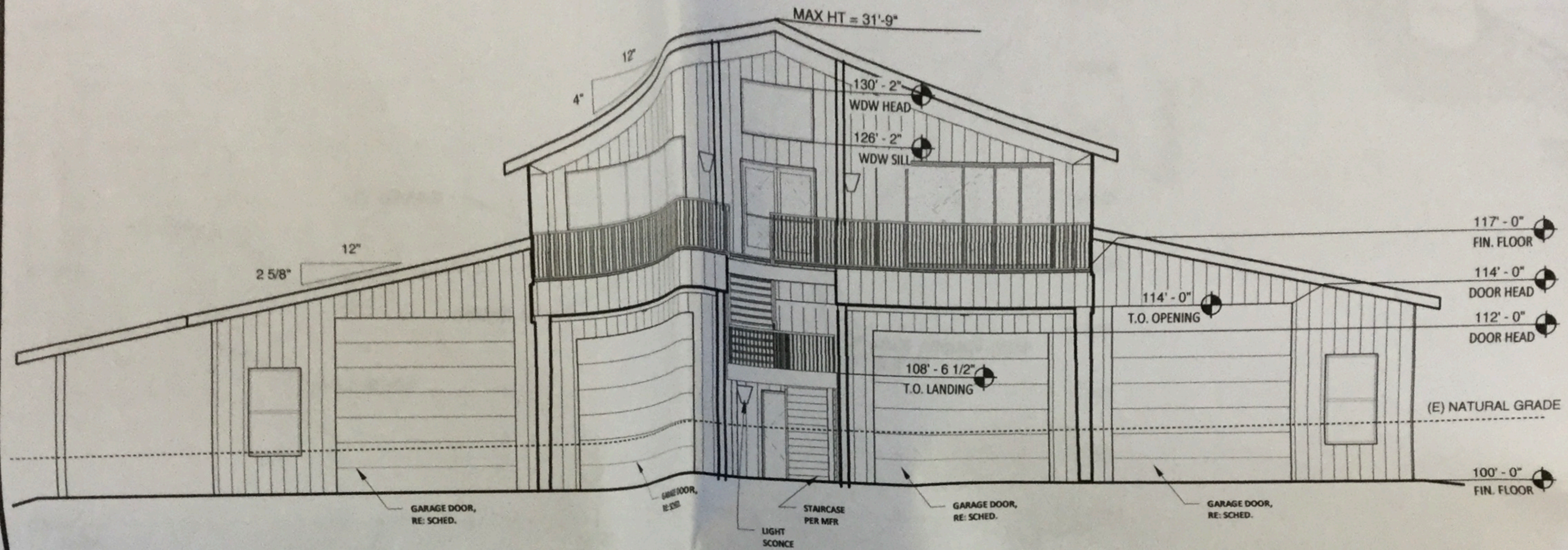
6552

6548

PM STA: 6+88.48
PM ELEV: 6544.04
K: 12.50
LVC: 50.00

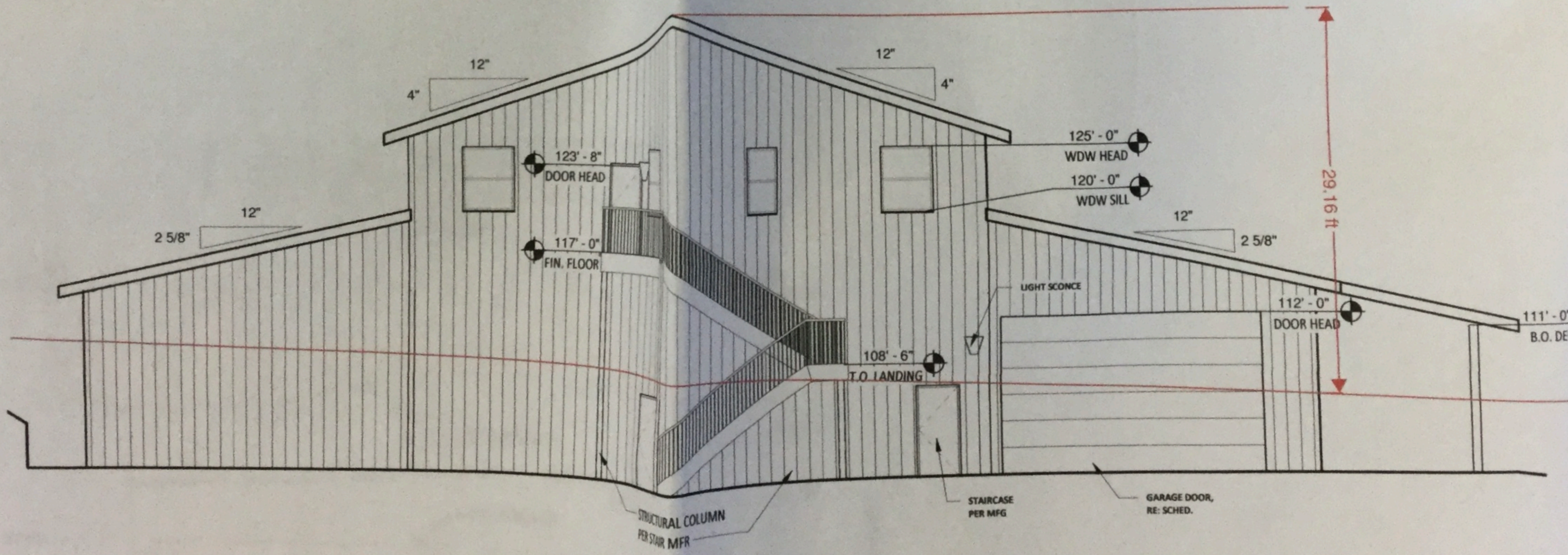
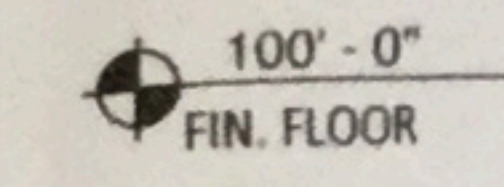
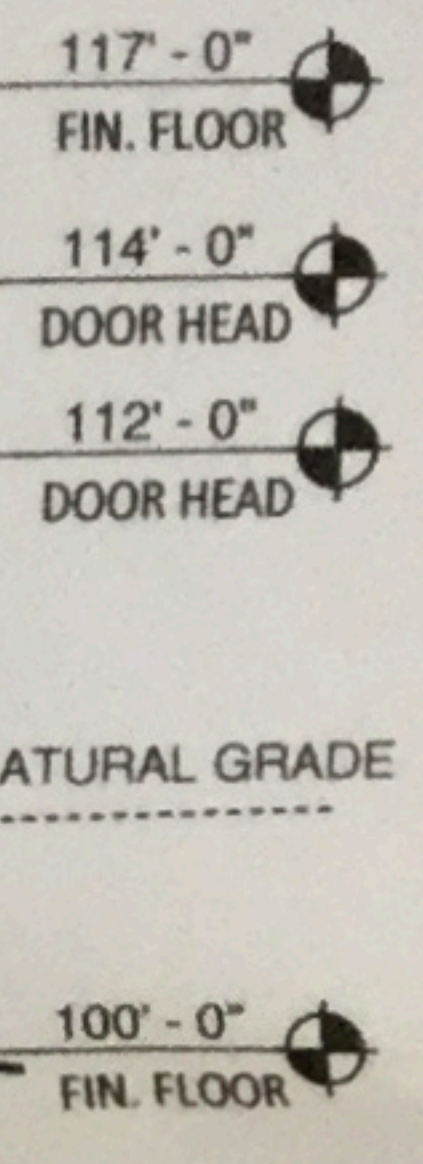
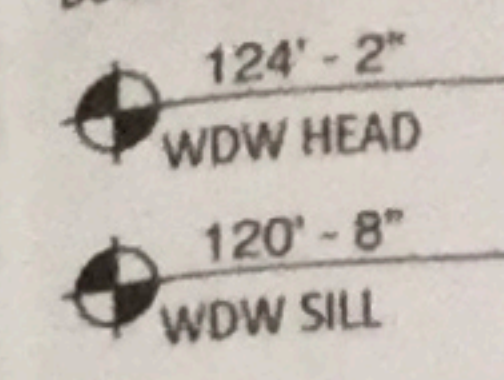
6.00%

LEGAL COMMITTEE AGENDA ITEM #10.4
& AGENDA ITEM #10.8

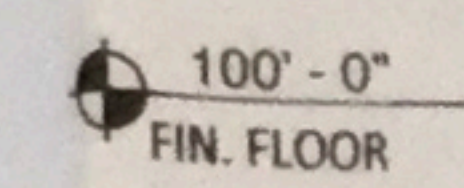
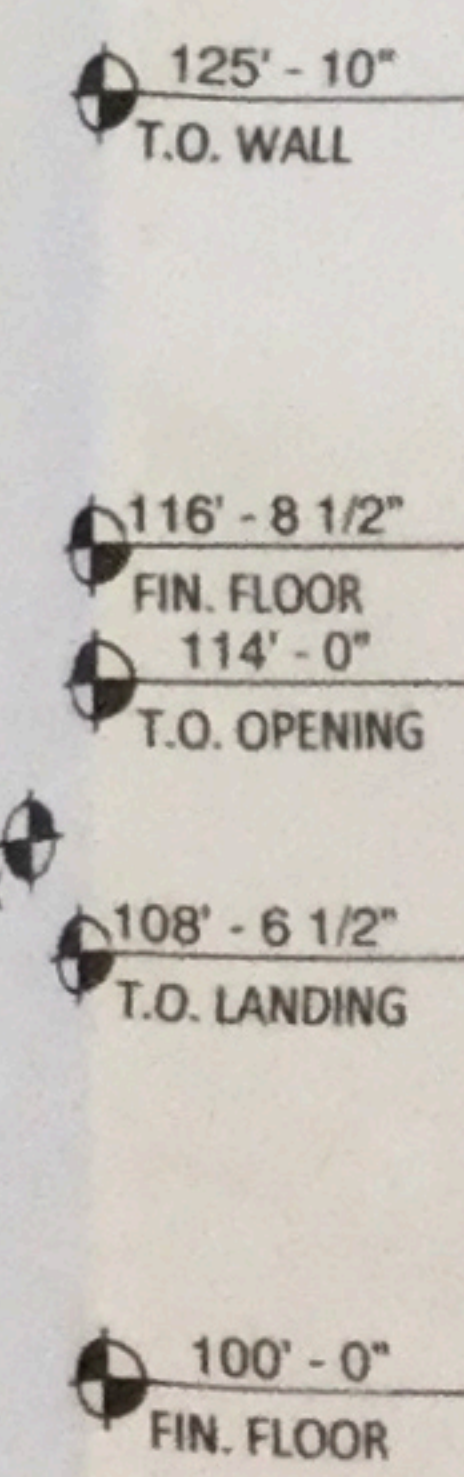


1 FRONT ELEVATION
 1/8" = 1'-0" RE: A2.1 / 1

VERIFY WINDOW SIZE AND SILL HEIGHT COMPLIANCE WITH EMERGENCY EGREES REQUIREMENTS OF LOCAL BUILDING CODES



3 REAR ELEVATION
 1/8" = 1'-0" RE: A2.1 / 1



2

4 LE...
 1/8" = 1'-0"

Attachment G

August 18, 2020 CTC Response to Sheaff/Mountain Addiction Response to NOV



Memorandum

To: John Marshall, Tahoe Regional Planning Agency
From: Sara Cutuli, California Tahoe Conservancy
Date: August 18, 2020
Subject: Factual Corrections to Justin Sheaff/Mountain Addiction LLC Response to Notice of Violation

Dear Mr. Marshall:

The California Tahoe Conservancy (Conservancy) has reviewed Justin Sheaff and Mountain Addiction LLC’s Response to Notice of Violation (Response), dated June 2, 2020, for factual accuracy. This memorandum provides factual corrections to assertions made in the Response.

1. Misrepresentation of the Timeline of Events

The Response misrepresents the relevant timeline through its focus on January and February 2020 activities:

- *On February 10, 2020 Conservancy personnel met with Sheaff to discuss what had transpired in late January. Sheaff informed Conservancy personnel that he did not know who had cut down the trees. In the ensuing weeks TRPA staff had discussions with neighbors in the area, none of whom had seen any tree cutting activity taking place. During the time that Conservancy reported the cutting of trees and disturbance of vegetation, neither Sheaff nor any Mountain Addiction affiliates were at the property. (Response at p. 4)*
- *According to the inspection reports by Conservancy personnel, it estimates that the tree and shrub cutting occurred during the last week of January, 2020. Neither Sheaff nor the principals of Mountain Addiction were at the Mountain Addiction residence during that timeframe with the possible exception of Sheaff and his family being at the residence during evening hours. . . . Likewise, there was no one, including “visitors”, from the Mountain Addiction affiliation in California between January 4th and February 15th, 2020.” (Response at p. 4) (See additional assertions on pages 6, 7, 9, 11.)*

Corrections/Clarifications: First, Sheaff was aware of the damage prior to the Cease and Desist Order. Conservancy staff met with Sheaff in 2018 after receiving calls from concerned neighbors that a snowmobile lodge was being constructed. At that time, the Conservancy informed Sheaff of acceptable uses of the property and that the Conservancy would be monitoring for any resource damage. In January 2020, after a snowstorm, Conservancy staff returned to the property to see how the property was being used, and whether there was concern over the use of snowmobiles on the property. On 1/23/2020, Jack Matthis inspected the property and saw several snowmobile tracks leading from the lodge to the ramp at the rear of the garage, and resource damage to shrubs. On 1/31/2020, Kelsey Lemming inspected the property and found snowcat tracks. Kelsey Lemming followed the tracks and found that the trees had recently been removed along the snowcat

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tracks' path. On 2/6/2020, Conservancy staff met with TRPA to show the cut living trees and damage to shrubs. On 2/10/2020, Conservancy staff met with Sheaff. Sheaff stated that he did not cut the trees but admitted to being there when the snowcat was operated on Conservancy property. On 2/20/2020, while the Conservancy was installing construction fence, an individual who was believed to be Sheaff spoke with Kelsey about the fence. Kelsey informed him that this was to prevent any more resource damage and informed him that 50 trees were cut down. Sheaff stated he did not know who cut the trees and that he has not seen resource damage.

With respect to the tree cutting, Respondents are shortening the relevant timeline. The damage was only discovered in early January. The trees were cut before January (sometime between summer and their discovery in January). There was sawdust viewed on top of the snow when the trees were discovered. Therefore, these were likely recent cuttings, after one of the snowstorms in 2019, or early 2020. The sawdust was still visible during the June 10, 2020 site visit. Further, at the time of the June site visit, the needles on the trees were still green, the felled portions were still bright in color and fresh, and the stumps are painted black. These could not have been from Conservancy forest management thinning based on the timing. No forest management activities took place on that property during the 2019 field season. The last forest thinning happened at least 10 years ago.

2. Mischaracterization of the Current and Historic Use of Conservancy Land

The Response makes several inaccurate assertions relating to the current and historic use of the Conservancy land:

- *It is undisputed that the Conservancy land has been historically used by the general public for decades, perhaps over forty years. Those uses consist of year-round recreational activities including hiking, walking, mountain bike riding, snow shoeing, cross country skiing, snowmobiling and other general recreational uses. (Response at p. 1)*
- *It is worthy to note that the Conservancy property, described as a "wild life parcel"⁴, adjoins several other parcels on which there are at least twelve homes, has several major trails that are, and have historically been, heavily used for hiking, snowmobiling, skiing, biking and both motorized and non-motorized use and has a newly constructed paved bike path. (Response at p. 3) (See additional assertions on page 6.)*
- *Sheaff's understanding was that these neighbors notified the Conservancy in the fall of 2018 that a "snowmobile lodge" was being built with plans to run snowmobile tours. Upon learning of the neighbors' false statements to TRPA and Placer County that Mountain Addiction was building a "snowmobile lodge" Sheaff explained. (Response at pp. 2-3) (See additional assertions on page 5.)*
- *Sheaff is aware of a few neighboring property owners who believe that a commercial snowmobile rental operation is taking place on the property. Perhaps, those individuals have concluded that they no longer have public access to the Conservancy Property. Notwithstanding the perception of those property owners, Respondents have kept the trail system opened and have maintained a trail running parallel to their driveway that accesses the trail system and Conservancy Property. That trail is used frequently by members of the general public. (Response at p. 7)*

Corrections/Clarifications: Mountain Addiction's characterization of the wildlife parcel is a misrepresentation of how the property has been used historically. The Conservancy has owned the parcel adjacent to Mountain Addiction's property since 1992. There are user-created neighborhood trails, for non-motorized activity on this adjacent parcel. The Conservancy does not create or maintain any of the trails, and motorized vehicles are not permitted on the bike path. The trail identified by the Response is not the same as the snowcat path and is irrelevant.

In 2018, Conservancy received concerned calls that the new lodge, which abuts Conservancy property (the ramp from the back of the garage leads directly to the Conservancy property line), would lead to increased snowmobile use, whether technically commercial operations or not. The neighbor's complaints are indicative that the Conservancy property is not popular for snowmobile use. There is no historical evidence of heavy snowmobile use on the parcel adjacent to the lodge or the larger Conservancy/US Forest Service properties. The Conservancy has not received a complaint related to snowmobiles or UTVs prior to Mountain Addiction's construction. The current heavy snowmobile use coincides with the house being built and ramp.

3. Incorrect Characterization of Felled Trees

Respondents incorrectly characterize the path of the felled trees:

- *"The Conservancy Resource Damage exhibit shows that the felled trees form a somewhat convoluted and meandering route across the Conservancy land that connects with the newly constructed paved public bike path." (Response at p. 1)*
- *"TRPA's and Conservancy's photographs, standing alone, show nothing more than the sporadic, and perhaps senseless, cutting of trees for no apparent reason." (Response at p. 2)*
- *"The TRPA photos clearly show that the locations of the felled trees do not support the notion that someone had an intent to create a new trail, path or route through the forest for any purpose. Instead, they appear to show that there were random cutting of trees with no apparent purpose in mind. Moreover, Respondents have had no reason whatsoever to create a new trail, path or route through." (Response at p. 2) (See additional assertions on page 7.)*
- *"Significantly, in most of the areas where trees were cut, especially the larger trees, there would have been no reason for tree removal for the purpose of snow cat or any other type of snow vehicle access. By way of example, the spacing between the larger trees that were cut and the next closest trees ranged between 18 to 25 feet, an area clearly wide enough for a snow cat to maneuver without the necessity of having to remove a tree." (Response pp. 4-5)*
- *Sheaff informed Conservancy personnel that he had in fact maintained the existing trail system for the many users of the Conservancy land and USFS land. The existing trail system is well defined and consists of the well marked foot paths and the newly built bike path. (Response at p. 8) (See additional assertions on page 10.)*
- *In areas where stumps exist, there were widths of open forest ranging 18-25 feet that would be ample room for a snowcat to maneuver without the necessity of having to cut down a tree. . . . Second, the areas in question where trees had been cut were already wide enough for snow cat access without the necessity to remove trees as clearly depicted in the photographs. . . . Finally, as noted, in the areas where trees were cut there were large fallen dead trees and large boulders that would have rendered snow cat passage untenable." (Response at p. 10) (See additional assertions on page 10.)*

Corrections/Clarifications: Considering the terrain, the tree coverage, slope, and boulders, the felled trees create the most direct route between the snowmobile lodge and the bike path. It is not a "straight shot" because it takes advantage of naturally occurring openings, in order to reduce the number of trees to be felled, and to avoid steeper slopes and boulders. It is exactly the presence of the large boulders and tree groupings that dictates the path of cut trees. The cut trees and manzanita connect the more open areas of the Conservancy property. This is a path for winter use, therefore, not all of the lower shrubs needed to be removed. Only those that were impeding the path or trees with stumps or branches in the way of the access of the snowcat. Nowhere else is there a consistent path of 19+ feet that runs directly between the snowmobile (or any other private property) to the bike path. Trees/shrubs along the path between the wider areas had to be cut to create a continuous access way.

There would not be access or a connection between these wider points **but for** the removal of certain trees that had to be removed to create the spacing to get 12 ft. for larger machinery. They were building trail that took advantage of and incorporated naturally wide areas into a path to create the snowcat access. Without the cuts the slope, ravines, the distance between trees and boulders would prevent a snowcat from traveling or from making turns. Sheaff admits the snowcat is 12ft wide. Sheaff admitted to grooming the bike path, Sheaff admits that he owns a snowcat, Mountain Addiction has a snowcat stored on its property, and Sheaff admitted to being at the lodge when the snowcat was used on Conservancy property. This shows that the purpose of the trees/resource damage is to create an access path for the snowcat.

Further, no forest management activities took place on that property during the 2019 field season. The last forest thinning happened at least 10 years. The cuts are not consistent with Conservancy forest thinning practices—the Conservancy’s forestry staff conducted a site visit and concluded that trees felled were not done by Conservancy or consistent with forestry management practice used in the basin. First, Conservancy forest thinning will generally only cut live trees that are suppressed (so close to another tree that its viability is threatened) or that have bad insect or disease infestation. The trees in this area with these conditions were previously treated. Here, the trees were still live with green needles and were not suppressed. Even if Conservancy had done a treatment recently, a majority of the live trees removed for the snowcat path would not have been removed for treatment.

Second, Conservancy forest thinning would not leave the felled trees and biomass on site in the same manner as was done here. Materials from previous treatments were piled and burned or chipped. Moreover, mechanical thinning collects the trees and removes the material from the area. Here, the trees taken would not have been left in the manner they were. They would have been processed to prevent future fire risk and to prevent insect infestations. Otherwise this defeats the purpose of limiting fire risk by adding to dead understory and undermining forest health. They also would not have been left for wildlife. The cut trees would have been transported off site for forest health if this was a treatment conducted by Conservancy.

Third, the Conservancy does not mark stumps with paint. The Conservancy would not paint the stumps after being cut. The only painting of trees is marking prior to treatment to identify those trees that would be felled as part of the treatment. It is commonly known within forestry professionals that painting stumps helps hide the age of the stumps. Here, many of the stumps were painted. Nonetheless, the age is more than evident by the tree material laying just outside the snowcat path, which showed fresh cuts, bright wood, and green needles. Lastly, if this was a private, illegal cutting of wood for firewood, the trees would not have been left at the side of the path. The only reasonable explanation remaining that fits the facts is that the trees were cut to create a path for the snowcat.

4. Incorrect Assertions Regarding Other Causes

The Response places unsubstantiated claims that the cause is other machinery.

- *The disturbance shown in the photographs could have been caused by either a snow cat, a UTV-side by side or a snowmobile – several of which are utilized in the area. (Response at p. 5)*
- *Moreover, Respondents have never used the Conservancy Property for snow cat grooming or snowmobile grooming. Sheaff has groomed only the existing trails and the bike path primarily for snowshoeing and/or cross country skiing access during the winter. He has never groomed any area on the Conservancy land for snowmobiling or any other activity. Snowmobilers, once they have gained access to the Conservancy property, fairly much go anywhere they please. (Response at p. 7) (See additional assertions on page 7.)*

- *Conservancy stated that its inspection in late January showed evidence of disturbance to vegetation caused by a snow cat including tracks leading to the Mountain Addiction property. The location of the snow tracks was not disclosed. However, the photographs of the tracks are consistent with the tracks of UTV-side by sides, many of which are owned and utilized by residents in the area. Sheaff is aware of at least three neighboring individuals who live in the area that own UTV-side by sides and use them on Conservancy Property and has observed as many as three to six different UTV-side by sides on the property over the years. (Response at p. 8) (See additional assertions on page 11.)*
- *Indeed, in Sheaff's experience, snowmobilers do not use or even access groomed trails in the area. Instead, they access the general forest itself which has wide open space as opposed to being confined to any sort of a trail system. (Response at p. 9) (See additional assertions on page 9.)*

Corrections/Clarifications: Respondents are conflating the relevant uses. It is irrelevant whether the ultimate grooming was for snowmobile access, cross country skiing, or joy riding. The tree and resource damage was done to create an access path to connect the lodge to the bike path. Sheaff admits to grooming the bike path for snow activities. There is no other access point for a snowcat to reach the bike path for grooming. Conservancy does not have formal trails, or formal trail maintenance agreements. The Conservancy does not maintain or groom, and do not condone private maintenance. There is no license agreement with Mountain Addiction or Sheaff. There is no grooming allowed, there is no authority to conduct such maintenance, and the trails are user created. Further, motorized vehicles are not permitted on the bike path.

The shrub damage is shown with snowmobile tracks, directly adjacent to the lodge. Sheaff/Mountain Addiction admit they are snowmobile enthusiasts and that Sheaff owns a snowcat. The snowcat tracks were seen just outside the lodge property line, from the ramp leading from the rear garage door. The larger tracks documented on Conservancy property match the tracks of the snowcat seen on the Mountain Addiction property. A UTV/side by side does not have the same width of individual tracks, width between tracks (wheelbase) or the same teeth on the track's tread, whereas it is admitted that a snowcat is approximately 12 feet wide. The photographs do not show a UTV on site. The Conservancy is not aware of UTV use in this area and has not received complaints regarding UTV use. It is irrelevant what the snowmobile use is, except to the extent that the off-trail use supports Conservancy's observation of tracks over damaged manzanita.

5. Other Incorrect Statements

The Response also makes several additional incorrect statements:

- *"In an attempt to resolve issues that resulted in the Notice of Violation, Respondents' attorney communicated with TRPA's attorney John Marshall relative to Respondents signing a waiver of the statute of limitations in order to pursue further investigation of the matter. Respondents agreed to a short waiver and signed waivers of the statute of limitations. Instead of conducting further investigation, TRPA elected to move forward with a Notice of Violation and file an action in U.S. District Court." (Response at p. 2)*

Corrections/Clarifications: Conservancy and TRPA attempted to meet with Sheaff and he declined, through his attorney, after originally agreeing to meet.

- *"The project also includes four front garage doors that lead directly out to a parking area. The rear garage door was not created, designed and constructed for snow cat and/or snowmobile access; it was designed for ventilation." (Response at p. 6)*

Corrections/Clarifications: There is a ramp that leads from the back door of the garage directly to Conservancy property, nearly abutting the property line. This ramp would not be required if the rear door was constructed for ventilation. There are also snowmobile tracks seen cut into the dirt just off of the ramp.

6. Admissions

The Response makes several important admissions.

- *While it is true that Sheaff owns a snow cat, no one had authorization from Mountain Addiction or Sheaff to use the snow cat during the time period in question. (Response at p. 8)*

Corrections/Clarifications: Sheaff admits that he owns a snowcat (an uncommon and expensive piece of machinery) but incorrectly identifies the relevant timeline. The Response did not address the relevant timeline, prior to January 2020.

- *The project is located adjacent to the south side of the Conservancy Property and includes a rear garage door. (Response at p. 5)*

Corrections/Clarifications: This is an admission that there is a rear garage door that abuts the Conservancy property, which indicates use of the Conservancy property.

- *Sheaff is a professional snowmobile rider and a firefighter. Sheaff is neither a professional snowmobile rider nor a wildland firefighter. He neither races, competes, received compensation, health or other benefits normally associated with the term professional. He is a structural fire fighter assigned to his department's training bureau. His use of chainsaws are confined to cutting into and accessing structures that are on fire. (Response at p. 6)*
- *To summarize, while it is clear that anyone with knowledge of how to operate a chainsaw could have cut down trees, the fact remains that neither Sheaff nor Mountain Addiction had any reason, motive or rationale to do so to "improve" snowmobile access. (Response at p. 10) (See additional assertions on page 11.)*

Corrections/Clarifications: Sheaff admits that he is an avid snowmobile rider. His background and experience with search and rescue, firefighting and outdoorsmanship makes him more apt to be comfortable cutting trees, even if this does not rise to the level of an expertise. Sheaff admitted that anyone with a chainsaw can cut the trees. Sheaff argues that he does not have expertise, and later states that there is no expertise needed to fell the trees as anyone with a chainsaw could come onto the property and cut the trees. Therefore, under his own logic he is admitting to being capable of cutting the trees.

The purpose was to create access for the snowcat to access the bike path for the grooming that is admitted to take place in winter. No other purpose is reasonably conceivable. UTVs do not fit the tracks, are not as wide as a snowcat and have much higher maneuverability. Moreover, the trees were not cut in areas where trees were 18-25 ft. apart. They were cut to connect more open areas for a continuous open path of 19+ ft. Without the cuts, the snowcat would not be able to transverse the property, because the pockets of wider areas were blocked by the trees and shrubs removed. But for the removal of the trees the snowcat access to the bike path would be prohibited.

- *Neither Sheaff nor Mountain Addiction use any trails on the property during the winter other than the existing hiking path trail and the bike trail which Sheaff has groomed for snowshoeing and cross country skiing activities. (Response at p. 7) (See additional assertions on page 11.)*

Corrections/Clarifications: Sheaff admits that he maintains the trails and bike path for winter use for cross-country skiers and snowshoers, which is unauthorized. It is irrelevant if the snowmobilers use the trails. The snowcat is a grooming machine. Sheaff admits to grooming the bike path. The snowcat can now reach the bike path via the winter access path created by removing trees and shrubs that were inhibiting a direct path from the lodge to the bike path.