MEMORANDUM

To: TRPA Hearings Officer

From: TRPA Staff

Date: July 26, 2012


Proposed Action: Hearings Officer action on the proposed project and related findings based on this Staff Summary and the Draft Permit (Attachment A)

Staff Recommendation: Staff recommends approval of the project based on this staff summary and the evidence contained in the project record. The recommended conditions of approval are contained in the attached Draft Permit.

Project and Site Description: The applicant is proposing to teardown an existing detached garage structure to construct a new single family dwelling on a vacant parcel in Crystal Bay, Nevada. There is no primary use on the property. The parcel is located adjacent to State Route 28 on the lake side of the highway and is currently accessed from Gonowabie Road through APN 123-133-23, an adjacent parcel. The proposed multi-story residence includes approximately 4,700 square feet of living area and new ingress and egress from State Route 28, requiring an encroachment permit from NDOT. Excavation to 16.5 feet below grade is authorized for a stepped foundation per a TRPA approved groundwater investigation (File #LCAP2012-0028). The parcel is very steep (43% slope) and sparsely vegetated, however it has an IPES score of 828 with 30 percent base allowable coverage. APN 123-133-24 is located within an avalanche danger area. There are a number of state and federal owned properties in the surrounding area that were acquired to be preserved as open space. Surrounding parcels that are developed are single family dwellings.

Issue: Due to the identified avalanche hazard and associated public safety issues, all new development within Plan Area Statement (PAS) 034 is considered a special use requiring Hearings Officer review in accordance with Section 2.2.2 of the TRPA Code.
Staff Analysis:

A. **Environmental Documentation:** TRPA staff has completed the Initial Environmental Checklist (IEC) and “Project Review Conformance Checklist and Article V (g) Findings” in accordance with Chapter 4, Subsection 4.3 of the TRPA Code of Ordinances. All responses contained on said checklists indicate compliance with the environmental threshold carrying capacities. A copy of the completed checklists will be made available at the Hearings Officer hearing and at TRPA.

B. **Plan Area Statement:** The Land Use Classification of PAS 034 is Residential and the Management Strategy is Mitigation. Agency Staff has reviewed the subject Plan Area and has determined that the project is consistent with the planning statement, planning considerations, and special policies. Policies and planning considerations regarding Highway 28 encroachment are being addressed through NDOT. The proposed single family dwelling meets all TRPA development standards.

C. **Required Findings:** The following is a list of the required findings as set forth in Chapter 4, 21, 30, 33, and 37 of the TRPA Code of Ordinances. Following each finding, Agency staff has indicated if there is sufficient evidence contained in the record to make the applicable findings or has briefly summarized the evidence on which the finding can be made.

1. **Chapter 4 – Required Findings:**

   (a) **The project is consistent with and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code and other TRPA plans and programs.**

   Based on the findings provided on the Initial Environmental Checklist and the Article V (g) Findings Checklist, there is sufficient evidence in the project file to make this finding.

   (b) **The project will not cause the environmental threshold carrying capacities to be exceeded.**

   TRPA staff has completed the “Project Review Conformance Checklist and Article V (g) Findings” in accordance with Chapter 4, Subsection 4.3 of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities. Also, the applicant has completed an Initial Environmental Checklist (IEC). No significant environmental impacts were identified and staff has concluded that the project will not have a significant effect on the environment. A copy of the completed checklist and IEC will be made available at the Hearings Officer hearing and at TRPA.
Wherever federal, state or local air and water quality standards applicable for the Region, whichever are strictest, must be attained, maintained, or exceeded pursuant to Article V(d) of the TPRA Compact.

The strictest air and water quality standards apply to the project. There are challenges to storm runoff infiltration on parcels with this type of topography, however as shown on the project plans (as modified by proposed conditions of approval) all air and water quality standards must be met maintained or exceeded. All potential effects are temporary and shall be mitigated through temporary and permanent Best Management Practices.

2. Chapter 21 – Special Use Findings:

(a) The project, to which the use pertains, is of such a nature, scale, density, intensity and type to be an appropriate use for the parcel on which, and surrounding area in which, it will be located.

Development of a single family dwelling is an appropriate use of the subject parcel, and is consistent with the residential land use classification of PAS 034. The scale and intensity of the proposed project is near maximum height and coverage, however this is comparable to existing development on surrounding parcels and will be mitigated to less than significant levels through incorporation of articulated building facades and roof planes, landscaping, and exterior colors that integrate with the surrounding natural environment. The project conforms to density standards of one unit per parcel.

(b) The project to which the use pertains, will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or general welfare of the region, and the applicant has taken reasonable steps to protect against any such injury and to protect the land, water, and air resources of both the applicant’s property and that of surrounding property owners.

A number of safety issues are associated with this project. Excavation and construction on steep rocky slopes requires careful planning. The new encroachment onto SR 28 presents several safety issues itself, however all of those considerations are being reviewed by NDOT. Despite years of effort by the applicant to be approved for an encroachment permit from NDOT, no encroachment has been issued yet. The primary strategy staff has conditioned in the Draft Permit to prevent injury and disturbance is to have all property lines marked with construction fencing, in addition to the Standard Conditions of Attachment R, to protect resources on the subject parcel and surrounding area.
(c) The project, to which the use pertains, will not change the character of the neighborhood detrimentally affect or alter the purpose of the applicable planning area statement, community plan and specific or master plan, as the case may be.

The new single family dwelling will maintain the existing residential character of the neighborhood and as conditioned in the Draft Permit will not detrimentally affect or alter the purpose of PAS 034 - Crystal Bay.

3. Chapter 30 - Relocation of Land Coverage

(a) The relocation is to an equal or superior portion of the parcel or project area, as determined by reference to the following factors:

(1) Whether the area of relocation already has been disturbed;
(2) The slope of and natural vegetation on the area of relocation;
(3) The fragility of the soil on the area of relocation;
(4) Whether the area of relocation appropriately fits the scheme of use of the property;
(5) The relocation does not further encroach into a stream environment zone, backshore, or the setbacks established in the Code for the protection of stream environment zones or backshore;

(6) The project otherwise complies with the land coverage mitigation program set forth in Section 30.6;

The parcel contains 655 square feet of existing coverage. The majority of the coverage is within the proposed building footprint. The coverage being relocated is necessary to meet Washoe County building setbacks.

(b) The area from which the land coverage was removed for relocation is restored in accordance with Subsection 30.5.3.

Restoration of the area where existing coverage is proposed to be removed and relocated will be completed pursuant to Subsection 30.5.3 of the TRPA Code of Ordinances. Native vegetation will be planted in areas where coverage removal is occurring.

(c) The relocation is not to Land Capability Districts 1a, 1b, 1c, 2 or 3, from any higher numbered land capability district.

The relocation is to the same land class and type.

AGENDA ITEM NO. V.A.
4. Chapter 33 – Excavation Findings

(a) A soils/hydrologic report prepared by a qualified professional, which proposed content and methodology has been reviewed and approved in advance by TRPA, demonstrates that no interference or interception of groundwater will occur as a result of the excavation; and

(b) The excavation is designed such that no damage occurs to mature trees, except where tree removal is allowed pursuant to subsection 33.6.5: Tree Removal, including root systems and hydrologic conditions of the soil. To ensure the protection of vegetation necessary for screening, a special vegetation protection report shall be prepared by a qualified professional identifying measures necessary to ensure damage will not occur as a result of the excavation; and

(c) Excavation material is disposed of pursuant to subsection 33.3.4: Disposal of Materials and the project area’s natural topography is maintained pursuant to subparagraph 36.5.1.A. If groundwater interception or interference will occur as demonstrated by a soils/hydrologic report prepared by a qualified professional, then the excavation can be made as an exception pursuant to subparagraph 33.3.6.A.2, provided measures are included in the project to maintain groundwater flows to avoid adverse impacts to SEZ vegetation and to prevent any groundwater or subsurface water flow from leaving the project area as surface flow.

A professional soils/hydrologic report submitted with TRPA File #LCAP2012-0028 demonstrates no interference or interception of groundwater will occur as a result of the proposed excavation. Trees that will be retained will be protected using temporary BMPs. Unused excavated material shall be hauled offsite to a TRPA approved location. The project is approved to excavate 16.5 feet below ground surface per TRPA File #LCAP2012-0028.

5. Chapter 37- Height

(a) When viewed from major arterials, scenic turnouts, public recreation areas or the waters of Lake Tahoe, from a distance of 300 feet, the additional height will not cause a building to extend above the forest canopy, when present, or a ridgeline.

The proposed height (42 feet above natural grade) is two feet lower than the existing garage on the parcel and will not cause the structure to extend above
the forest canopy or ridgeline when viewed from a distance of 300 feet from any designated scenic viewpoint (see photos - Attachment 3)

(b) When outside a community plan, the additional height is consistent with the surrounding uses.

Because of the steep slopes in the area and TRPA’s way of measuring allowed height (e.g., from the low point of the structure to the highest roof ridge) the majority of the surrounding residential development building height is at or near the height of the proposed project, therefore the additional height is consistent with the surrounding uses.

(c) The maximum building height at any corner of two exterior walls of the building is not greater than 90 percent of the maximum building height. The maximum height at the corner of two exterior walls is the difference between the point of lowest natural ground elevation along an exterior wall of the building, and point at which the corner of the same exterior wall meets the roof.

The maximum building height at any corner of two exterior walls is not greater than 90 percent of the maximum building height.

Required Actions: Agency staff recommends that the Hearings Officer approve the project by making the following motions and findings based on this staff summary and the evidence contained in the record:

I. Approve the findings contained in this staff summary, and a finding of no significant environmental effect.

II. Approve the project, based on the staff summary, subject to the conditions contained in the attached Draft TRPA permit.

Attachments:

A. Draft Permit
B. Site Plan
C. Photos and photo simulations
PROJECT DESCRIPTION: New Single Family Dwelling

PERMITTEE: Juliet Ashton

APN: 123-133-24

FILE: #ERSP2012-0655

COUNTY/LOCATION: 426 State Route 28, Crystal Bay, Nevada

Having made the findings required by Agency ordinances and rules, the TRPA Hearings Officer approved the project on August 2, 2012, subject to the standard conditions of approval attached hereto (Attachment R) and the special conditions found in this permit.

This permit shall expire on August 2, 2015, without further notice unless the construction has commenced prior to this date and diligently pursued thereafter. Commencement of construction consists of pouring concrete for a foundation and does not include grading, installation of utilities or landscaping. Diligent pursuit is defined as completion of the project within the approved construction schedule. The expiration date shall not be extended unless the project is determined by TRPA to be the subject of legal action which delayed or rendered impossible the diligent pursuit of the permit.

NO DEMOLITION, CONSTRUCTION OR GRADING SHALL COMMENCE UNTIL:

(1) TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT;

(2) ALL PRE-CONSTRUCTION CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA’S ACKNOWLEDGEMENT OF THIS PERMIT;

(3) THE PERMITTEE OBTAINS A COUNTY BUILDING PERMIT. TRPA’S ACKNOWLEDGEMENT MAY BE NECESSARY TO OBTAIN A COUNTY PERMIT. THE COUNTY PERMIT AND THE TRPA PERMIT ARE INDEPENDENT OF EACH OTHER AND MAY HAVE DIFFERENT EXPIRATION DATES AND RULES REGARDING EXTENSIONS.

(4) A TRPA PRE-GRADING INSPECTION HAS BEEN CONDUCTED WITH THE PROPERTY OWNER AND/OR CONTRACTOR.

_____________________________________   ______________________
TRPA Executive Director/Designee    Date

PERMITTEE’S ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents’ and employees’ compliance with the permit conditions. I also understand that if the property is sold, I remain liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

Signature of Permittee ________________________________ Date ________________

PERMIT CONTINUED ON NEXT PAGE

AGENDA ITEM NO. V.A.
D-R-A-F-T

APN: 123-133-24
FILE NO. ERSP2012-0655

Air Quality Mitigation Fee (1): Amount $3,258.40 Paid ____ Receipt No.______

Water Quality Mitigation Fee (2): Amount $3,024.36 Paid ____ Receipt No.______

Offsite Coverage Mitigation Fee (3): Amount $18,990.00 Paid ____ Receipt No.______

Security Posted (4): Amount $5,000.00 Posted _____ Type_____ Receipt No.______

Security Administrative Fee (5): Amount $________ Paid_____ Receipt No. ______

Notes:
(1) See Special Condition 3.C, below.
(2) See Special Condition 3.D, below.
(3) See Special Condition 3.E, below.
(4) See Special Condition 3.F, below.
(5) $152 if a cash security is posted, or $135 if a non-cash security is posted.

Required plans determined to be in conformance with approval: Date: _________

TRPA ACKNOWLEDGEMENT: The permittee has complied with all pre-construction conditions of approval as of this date and is eligible for a county building permit:

___________________________________________________________________

TRPA Executive Director/Designee Date

SPECIAL CONDITIONS

1. This permit specifically authorizes the construction of a new single family dwelling on APN 123-133-24, as shown on the site plans submitted on May 3, 2012. Excavation shall not exceed 16.5 feet below ground surface pursuant to TRPA File LCAP2012-0028.

2. The Standard Conditions of Approval listed in Attachment R shall apply to this permit.

AGENDA ITEM NO. V.A.
3. Prior to permit acknowledgement, the following conditions of approval must be satisfied.

A. The site plan shall be revised to include:

   (1) Identification of staging area for construction equipment and materials and depiction of temporary BMPs to define and protect staging areas.

   (2) Construction protective fencing along all surveyed property lines.

   (3) The permittee shall submit calculations using demonstrating that the proposed infiltration trenches are sized accordingly for the slope and soil type of the property and will capture and infiltrate a 20 year/1 hour storm event using the updated spread sheet available at www.tahoebmp.org.

   (4) A note indicating all unused excavated material will be hauled offsite to a TRPA approved location.

   (5) Location of all recorded easements inherent to the property or resulting from this project.

B. The permittee shall submit a landscape/revegetation plan for the project area. The landscape plan shall include the replacement planting of three trees for every one tree removed. All vegetation shall be consistent with the requirements of Chapter 30 of the TRPA Code of Ordinances, including the specification for sizing and species of plants.

C. The permittee shall submit a $3,258.40 air quality mitigation fee. This fee is based on the addition of 10 daily vehicle trip ends at $325.84/trip.

D. A water quality mitigation fee of $3,024.36 shall be paid to TRPA. This fee is based on the creation of 1,626 square feet of land coverage at a rate of $1.86/Sq. ft.

E. The permittee shall submit an offsite coverage mitigation fee of $18,990 for the creation of 1,055 square feet of land coverage in the public right-of-way. The fee is based on $18 per square foot for projects within the Agate Bay – Nevada Hydrologic Area.

F. The security required under Standard Condition A.3 of Attachment R shall be $5,000. Please see Attachment J, Security Procedures, for appropriate
methods of posting the security and for calculation of the required security administration fee.

G. The permittee shall record the attached TRPA approved deed restriction to hold TRPA harmless from any and all liabilities. Evidence of document recording is required prior to final acknowledgement of the permit.

H. The permittee shall provide an approved encroachment permit from NDOT. Final design of safety improvements shall adhere to NDOT standards as well as TRPA visual standards.

I. The permittee shall submit three sets of final construction drawings and site plans to TRPA.

4. Excavation equipment shall be limited to the foundation footprint to minimize site disturbance. No grading or excavation shall be permitted outside of the building footprint.

5. No boulders or rock outcrops shall be moved or modified.

6. The permittee shall submit a projected construction completion schedule to TRPA prior to commencement of construction. Said schedule shall include completion dates for each item of construction, as well as BMP installation for the entire project area.

7. Temporary and permanent BMPs may be field fit by the Environmental Compliance Inspector where appropriate.

8. No trees shall be removed (other than those shown on the approved site plan) or trimmed for view enhancement purposes without prior TRPA written approval as per the conditions of the Landscape and Revegetation Plan.

9. This site shall be winterized in accordance with the provisions of Attachment R by October 15th of each construction season.

10. To the maximum extent allowable by law, the permittee agrees to indemnify, defend, and hold harmless TRPA, its Governing Board, its Planning Commission, its agents, and its employees (collectively, TRPA) from and against any and all suits, losses, damages, injuries, liabilities, and claims by any person (a) for any injury (including death) or damage to person or property or (b) to set aside, attack, void, modify, amend, or annul any actions of TRPA. The foregoing indemnity obligation applies, without limitation, to any and all suits, losses, damages, injuries, liabilities, and claims by any person from any cause.

AGENDA ITEM NO. V.A.
whatsoever arising out of or in connection with either directly or indirectly, and in whole or in part (1) the processing, conditioning, issuance, or implementation of this permit; (2) any failure to comply with all applicable laws and regulations; or (3) the design, installation, or operation of any improvements, regardless of whether the actions or omissions are alleged to be caused by TRPA or permittee.

Included within the permittee's indemnity obligation set forth herein, the permittee agrees to pay all fees of TRPA’s attorneys and all other costs and expenses of defenses as they are incurred, including reimbursement of TRPA as necessary for any and all costs and/or fees incurred by TRPA for actions arising directly or indirectly from issuance or implementation of this permit. Permittee shall also pay all costs, including attorneys’ fees, incurred by TRPA to enforce this indemnification agreement. If any judgment is rendered against TRPA in any action subject to this indemnification, the permittee shall, at its expense, satisfy and discharge the same.

END OF PERMIT
FINDING OF NO SIGNIFICANT EFFECT

PROJECT DESCRIPTION: New Single Family Dwelling

APN: 123-133-24

PERMITTEE: Ashton FILE: # ERSP2012-0655

COUNTY/LOCATION: Washoe/426 State Route 28, Crystal Bay, Nevada

Staff Analysis: In accordance with Article IV of the Tahoe Regional Planning Compact, as amended, and Section 4.3 of the TRPA Rules and Regulations of Practice and Procedure, the TRPA staff has reviewed the information submitted with the subject project. On the basis of this initial environmental evaluation, Agency staff has found that the subject project will not have a significant effect on the environment.

Determination: Based on the above-stated finding, the subject project is conditionally exempt from the requirement to prepare an Environmental Impact Statement. The conditions of this exemption are the conditions of permit approval.

_________________________________________  _______________
TRPA Chairman or Executive Director/Designee  Date

AGENDA ITEM NO. V.A.
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
TO HOLD HARMLESS AND INDEMNIFY
("DEED RESTRICTION")
TO BE RECORDED AGAINST APN 123-133-24

This Deed Restriction is made this _____ day of _________________, 20_______, by Rachel Jenevieve Ashton, Trustee of the 2005 Rachel Jenevieve Ashton Revocable Trust (Hereinafter “Declarant’”).

RECITALS

1. Whereas Declarant applied to the Tahoe Regional Planning Agency (Hereinafter “TRPA”) for a permit to construct a new single family dwelling located at 426 State Route 28, Washoe County, Nevada, and described as follows:

   See Exhibit “A” attached hereto and made a part hereof (Hereinafter “Property”).

   Said parcel description was recorded in the Office of the Washoe County Recorder on November 1, 2005, as Document Number 3301005, and having Assessor’s Parcel Number 123-133-24.

2. Whereas, the Property is located within a TRPA Plan Area that has been identified as an avalanche danger area.

3. The Property is located in the Tahoe Region as described in the Tahoe Regional Planning Compact (P.L. 96-551, Stat. 3233, 1980), which region is subject to the regional plan and the ordinances adopted by the TRPA pursuant to the Tahoe Regional Planning Compact.
4. As a condition of the above approval, TRPA required that an appropriate deed restriction be recorded documenting the Declarant’s agreement on behalf of Declarant and Declarant’s heirs, successors and assigns, to hold harmless and indemnify TRPA and to record a deed restriction identifying said agreement.

DECLARATIONS

1. Therefore, in consideration of TRPA’s issuance of a permit to construct a new single family dwelling, Declarant hereby assumes any and all risk associated with the construction, maintenance, ownership and use of the Property and the single family dwelling with attached garage, and further agrees to indemnify, defend, hold harmless and release TRPA, the members of its Governing Board, its successors, agents and employees as follows:

A. Declarant hereby agree to indemnify, defend and hold harmless TRPA, the members of its Governing Board, its successors, agents and employees (collectively referred to hereafter as “Indemnitee”) from any and all liabilities, losses or damages, including court costs and attorney fees, Indemnitee may suffer or incur as a result of claims, suits, actions, demands, damages, expenses, costs of judgments against it as a result of an avalanche arising from or related to TRPA’s issuance of a permit to construct a new single family dwelling on the above-described Property, whether or not the liability, loss or damage is caused by or arises out of, the negligence of permittee, his heirs, executors, successors, assigns, administrators, agents, grantees, lessees, sublessees, guests or invitees.

B. Declarant agrees that Indemnitee may employ attorneys of its own selection to appear and defend the claim, action or suit on behalf of the Indemnitee, at the expense of permittee. Indemnitee, at its option, shall have the sole authority for the direction and conduct of its defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against Indemnitee.

C. Declarant expressly assumes full responsibility for all damages, losses and injuries which may result to any person or persons or adjoining property by reason of the construction, maintenance, use or ownership of the Property and agree to indemnify Indemnitee against any and all claims, actions, demands, suits, causes of action, damages, injuries or losses which arise from or are related to TRPA’s issuance of a permit for construction of a single family dwelling on the above-described Property.

2. This Deed Restriction shall be deemed a covenant running with the land or an equitable servitude, as the case may be, and shall be binding on the Declarant’s,
their heirs, successors and assigns all persons hereafter acquiring or owning any interest in the above-described Property.

3. This Deed Restriction shall not be modified or revoked without the prior express written and recorded consent of TRPA or its successor agency, if any.

4. Declarant has read this Deed Restriction and understands all of its terms. Declarant has executed this Deed Restriction voluntarily and with full knowledge of its significance. Declarant has been offered the opportunity to review the terms of this Deed Restriction with an attorney prior to executing this Deed Restriction.
IN WITNESS WHEREOF, Declarant has executed this Deed Restriction on the day and year written above.

Declarant’s Signature:

__________________________________  Dated: _________________________
Rachel Jenevieve Ashton, Trustee

STATE OF )
COUNTY OF )   SS.

On ______________________, before me,______________________, Notary Public, personally appeared_____________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ________________ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_______________________________________
NOTARY PUBLIC
APPROVED AS TO FORM:

_____________________________________
Tahoe Regional Planning Agency

STATE OF NEVADA )
 ) SS.
COUNTY OF DOUGLAS )

On _________________, before me,___________________________, Notary Public, personally appeared ________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_______________________________________
NOTARY PUBLIC
Project Name: Metro PCS

Application Type: Linear Public Facility

Applicant: Metro PCS

Applicant’s Representative: Jerry Jazmadarian

Agency Planner: David L. Landry

Location: 4130 Lake Blvd., City of South Lake Tahoe

Parcel Number/File Number: 029-190-32/ERSP2012-0451

Staff Recommendation: Staff recommends approval of the project based on this staff summary and evidence contained in the project record.

Project Description: This is a proposal for the development and operation of a wireless communications facility to be located entirely on the rooftop of the Embassy Suites Hotel located at 4130 Lake Tahoe Boulevard in South Lake Tahoe. The project will involve the installation of radio equipment cabinets placed on a raised metal platform on the eight floor roof of the building, underneath the roof overhang of the ninth floor. The equipment cabinets will not be visible from the scenic corridors along US Highway 50. Additional work will include the installation of six panel antennas at different location surrounding the circumference of the roof. The antennas will not exceed the current building height and will be painted to match the existing colors of the roof. All connecting cables will be placed entirely within the building structure. This project involves no new land coverage or soil disturbance.

Site Description: The project site is the hotel roof top of the Embassy Suites Hotel which fronts Lake Tahoe Boulevard, City of South Lake Tahoe, El Dorado County. The project area is located within Plan Area Statement 89B which is a part of the Stateline/Ski Run Community Plan.

Issues: The proposed project involves the installation of linear public facility; (transmission and receiving facility), and a special use determination and therefore requires Hearings Officer review in accordance with Chapter 4, Appendix A, of the TRPA Code.
Staff Analysis:

A. **Environmental Documentation:** The applicant has completed an Initial Environmental Checklist (IEC) in order to assess the potential environmental impacts of the project. No environmental impacts were identified and staff has concluded that the project will not have a significant effect on the environment. A copy of the completed IEC will be made available at the Hearings Officer hearing and at TRPA.

B. **Plan Area Statement:** The project is located within the Plan Area Statement 89 a part of the Stateline/Ski Run Community Plan. The Land Use Classification is Tourist and the Management Strategy is Redirection. Agency Staff has reviewed the subject Plan Area Statement and has determined that the project is consistent with the applicable planning statement, planning considerations, and special policies. The proposed project is listed as a special use.

C. **Land Coverage:** There is no new land coverage associated with this project.

D. **Height:** This project complies with height requirements of the TRPA Code of Ordinances.

E. **Scenic Impacts:** The proposed project is visible from U.S. Highway 50, Scenic Roadway Unit 32 (Casino Area). The applicant has provided photosimulations of views of the proposed antennas from several views along or in proximity to Highway 50 which demonstrate how the proposed facilities will blend in with the existing structure.

Required Findings: The following is a list of the required findings as set forth in Chapter 4 and 21 of the TRPA Code of Ordinances. Following each finding, Agency staff has indicated if there is sufficient evidence contained in the record to make the applicable findings or has briefly summarized the evidence on which the finding can be made.

1. **Chapter 4 – Required Findings:**

   (a) **The project is consistent with and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code and other TRPA plans and programs.**

   Based on the findings provided on the Initial Environmental Checklist and the Article V(g) Findings Checklist, there is sufficient evidence in the project file to make this finding.

   (b) **The project will not cause the environmental threshold carrying capacities to be exceeded.**
TRPA staff has completed the “Project Review Conformance Checklist and Article V(g) Findings” in accordance with Chapter 4, Subsection 4.3 of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities. Also, the applicant has completed an Initial Environmental Checklist (IEC). No significant environmental impacts were identified and staff has concluded that the project will not have a significant effect on the environment. A copy of the completed checklist and IEC will be made available at the Hearings Officer hearing and at TRPA.

(c) Wherever federal, state or local air and water quality standards applicable for the Region, whichever are strictest, must be attained and maintained pursuant to Article V(g) of the TPRA Compact, the project meets or exceeds such standards.

Upon completion of construction, the projects will have no impact upon air or water quality standards.

2. Chapter 21 – Special Use Findings:

(a) The project, to which the use pertains, is of such a nature, scale, density, intensity and type to be an appropriate use for the parcel on which, and surrounding area in which, it will be located.

The existing use is tourist accommodation. The addition of cellular service and equipment which is an appropriate use for the parcel will not negatively impact the tourist accommodation use.

(b) The project to which the use pertains, will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or general welfare of the region, and the applicant has taken reasonable steps to protect against any such injury and to protect the land, water, and air resources of both the applicant’s property and that of surrounding property owners.

The proposed project will not produce any added permanent noise, glare, odor, or vibration impacts. The use will not be disturbing to the health, safety, and enjoyment of the property or general welfare of persons or property in the neighborhood or region.

(c) The project, to which the use pertains, will not change the character of the neighborhood detrimentally affect or alter the purpose of the applicable planning area statement, community plan and specific or master plan, as the case may be.

The proposed project will not change the character of the neighborhood as the existing building structure is being utilized for the placement and concealment of antennas and equipment. The equipment will be painted to match the existing building structure. The project as conditioned is consistent with the existing tourist use on the parcel.
Required Actions: Staff recommends that the Hearings Officer take the following actions:

I. Approve the findings contained in this staff summary, and a finding of no significant environmental effect.

II. Approve the project, based on the staff summary, subject to the conditions contained in the attached Draft TRPA Permit.

Attachments:

A. Draft Permit
B. Project Plans
PROJECT DESCRIPTION: Transmission and Receiving Facilities (Wireless Communications)  APN: # 029-190-32

PERMITTEE: Roppongi – Tahoe, LP  FILE: # ERSP2012-0451

COUNTY/LOCATION: EL Dorado / 4130 Lake Tahoe Boulevard, City of South Lake Tahoe, CA

Having made the findings required by Agency ordinances and rules, TRPA Hearings Officer approved the project on August 2, 2012 subject to the standard conditions of approval attached hereto (Attachment Q) and the special conditions found in this permit.

This permit shall expire on August 2, 2015 without further notice unless the construction has commenced prior to this date and diligently pursued thereafter. Diligent pursuit is defined as completion of the project within the approved construction schedule. The expiration date shall not be extended unless the project is determined by TRPA to be the subject of legal action which delayed or rendered impossible the diligent pursuit of the permit.

NO CONSTRUCTION OR GRADING SHALL COMMENCE UNTIL:
(1) TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE(S) HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT;
(2) ALL PRE-CONSTRUCTION CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA'S ACKNOWLEDGEMENT OF THIS PERMIT;
(3) THE PERMITTEE OBTAINS A COUNTY BUILDING PERMIT. TRPA'S ACKNOWLEDGEMENT IS NECESSARY TO OBTAIN A COUNTY BUILDING PERMIT. THE COUNTY PERMIT AND THE TRPA PERMIT ARE INDEPENDENT OF EACH OTHER AND MAY HAVE DIFFERENT EXPIRATION DATES AND RULES REGARDING EXTENSIONS; AND
(4) A TRPA PRE-GRADING INSPECTION HAS BEEN CONDUCTED WITH THE PROPERTY OWNER AND/OR THE CONTRACTOR.

_____________________________________   ______________________
TRPA Executive Director/Designee    Date

PERMITTEES' ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents' and employees' compliance with the permit conditions. I also understand that if the property is sold, I remain liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

___________________________     ______________________
Signature of Permittee(s)      Date

(PERMIT CONTINUED ON NEXT PAGE)
Security Posted (1): Amount $2,000 Type ______ Paid _____ Receipt No.______

Security Administrative Fee (2): Amount $________ Paid _____ Receipt No.______

Notes:
(1) Amount to be determined. See Special Condition 3.C, below.
(2) $152 if a cash security is posted or $135 if a non cash security is posted.

Required plans determined to be in conformance with approval: Date: __________

TRPA ACKNOWLEDGEMENT: The permittee has complied with all pre-construction conditions of approval as of this date.

__________________________________________________________________________
TRPA Executive Director/Designee                  Date

SPECIAL CONDITIONS

1. This permit specifically authorizes the installation of six (6) panel antennas with the roof structure of the Embassy Suites Hotel and two radio equipment cabinets placed on an 8 foot by 15 foot raised metal platform on the eight floor of the hotel located beneath the overhang and the ninth floor roof and placed completely out of view. The antennas and associated equipment will be painted to match the existing roof. Not antennas or equipment are permitted to protrude above the roof line.

There will be no changes to existing land coverage or the need for grading or the installation of BMPs. The communications facility is unmanned and therefore will require monthly maintenance visits by MetroPCS staff.

2. The Standard Conditions of Approval listed in Attachment Q shall apply to this permit.

3. Prior to final permit acknowledgement the following conditions of approval shall be satisfied.

   A. The site plan shall be revised to include:

      (1) The site plan shall further identify that no additional land coverage is proposed for this project.
(2) Notation that all new equipment will be installed below the roof line and will be painted to match the existing roof.

(3) Identification of the equipment, material and machinery staging, and materials storage locations. All construction staging shall be on currently disturbed areas.

B. The permittee shall submit a projected construction completion schedule to TRPA prior to acknowledgment.

C. The security required under Standard Condition A.3 of Attachment C shall be $2,000. Please see Attachment J, Security Procedures, for appropriate methods of posting the security and for calculation of the required security administration fee.

D. The permittee shall provide three (3) sets of the proposed final plans for TRPA acknowledgement.

4. To the maximum extent allowable by law, the Permittee agrees to indemnify, defend, and hold harmless TRPA, its Governing Board, its Planning Commission, its agents, and its employees (collectively TRPA) from and against any and all suits, losses, damages, injuries, liabilities, and claims by any person (a) for any injury (including death) or damage to person or property or (b) to set aside, attack, void, modify, amend, or annul any actions of any TRPA. The foregoing indemnity obligation applies, without limitation, to any and all suits, losses, damages, injuries, liabilities, and claims by any person from any cause whatsoever arising out of or in connection with either directly or indirectly, and in whole or in part (1) the processing, conditioning, issuance, or implementation of this permit; (2) any failure to comply with all applicable laws and regulations; or (3) the design, installation, or operation of any improvements, regardless of whether the actions or omissions are alleged to be caused by TRPA or Permittee.

Included within the Permittee's indemnity obligation set forth herein, the Permittee agrees to pay all fees of TRPA's attorneys and all other costs and expenses of defenses as they are incurred, including reimbursement of TRPA as necessary for any and all costs and/or fees incurred by TRPA for actions arising directly or indirectly from issuance or implementation of this permit. Permittee shall also pay all costs, including attorneys' fees, incurred by TRPA to enforce this indemnification agreement. If any judgment is rendered against TRPA in any action subject to this indemnification, the Permittee shall, at its expense, satisfy and discharge the same.

5. Any normal construction activity creating noise in excess of the TRPA noise standards shall be considered exempt from said standards provided all such work is conducted between the hours of 8:00 A.M. and 6:30 P.M.

END OF PERMIT

AGENDA ITEM NO. V.B.
Photosimulation of view looking north from Lake Parkway.

**Existing**

**Proposed**

- Proposed antennas (typical of 6 places)
- Proposed antennas (not visible, behind trees)
Photosimulation of view looking west from the Harrah's parking lot.
Photosimulation of view looking east from Cedar Ave, one block west of Hwy 50.

Existing

Proposed antennas (typical of 6 places)
Photosimulation of view looking southeast from Cedar Ave, one block west of Hwy 50.