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.gov

June 3, 2025

Kevin Agan
Agan Consulting Corporation
P.O. Box 9180
Incline Village, NV 89450

Sent via email to: kevin@aganconsulting.com

DENIAL OF APPLICATION FOR EXISTING MOORING BUOY, 225 RUBICON AVENUE, PLACER COUNTY, CALIFORNIA, ASSESSORS PARCEL NUMBER (APN) 085-252-001, TRPA FILE NUMBER BUOY2025-0665, REGISTRATION SUBMISSION NUMBER 11309

Dear Mr. Agan:

The Tahoe Regional Planning Agency (TRPA) has completed the review of your application for the subject property. TRPA is unable to recognize the applied for mooring buoy as existing as you did not provide documentation of a valid authorization from an applicable federal or state agency with jurisdiction at Lake Tahoe, showing authorization for placement of the buoy by the owner of the parcel at 225 Rubicon Avenue, as required by TRPA Code of Ordinances 84.3.3.D.3.b.

Background

You have provided a March 23, 2021 letter from the United States Army Corps of Engineers (USACE) stating that a mooring buoy has been in place in the location you identified to USACE since 1966. The "grandfathered" letter does not include any information that would link the claimed buoy to the Rubicon Avenue lot owned by the applicant.

You have also provided an affidavit stating that the owners of another parcel located at 4065 Doe Avenue in Placer County (APN 085-153-018, owned by the "Draheim family") received permission from an unincorporated association, the Tahoe Pines Homeowners Association (TPHA), to use a buoy in the TPHA buoy field. This was known as "buoy 11". The submitted affidavit also states that an application was made by TPHA to the California State Lands Commission (CSLC) for permission to place the buoy field, but there is no evidence that it was ever approved.

The affidavit goes on to say that the applicant's father purchased 225 Rubicon Avenue in 1971, and the Draheim family allowed the applicant's father, for a fee, to moor a boat on buoy 11, and that the applicant's family has moored a boat on buoy 11 ever since.

The affidavit includes a November 4, 2020, letter from the TPHA president to the CSLC stating that TPHA does not object to continued use of a buoy (presumably buoy 11) by the "Lyons", with a reference to an unrelated littoral parcel.

The applicant's counsel has also provided a reference to the Trout/MacLaughlin existing buoys, which were permitted in 2009 (MOOR2009-0815). This approval was in error, as the applicant owned a non-littoral parcel, APN 097-092-003, and the application appears to have been processed as though applicable to a littoral parcel. On October 11, 2022, John Marshall confirmed that TRPA would "honor" that past permit.

Applicable Standards

Per TRPA Code of Ordinances section 84.3.3.D.3.b, TRPA may grant a permit for a maximum of one existing buoy as an accessory structure to the primary use on a non-littoral parcel, provided (i), the non-littoral parcel owner provides clear evidence of the existence of the buoy prior to February 10, 1972; and (ii) the non-littoral parcel owner provides a valid authorization from the applicable federal or state agency with jurisdiction at Lake Tahoe. The long-standing interpretation of these requirements by the agency was tested in the United States District Court for the Eastern District of California, where the court ruled in favor of TRPA. (*Bryan v. Tahoe Reg'l Planning Agency*, 2:21-cv-2340 TLN AC PS, 6 (E.D. Cal. Jan. 24, 2023).)

The court upheld TRPA's interpretation of Code Section 84.3.3.D.3.b to require a showing (1) that the buoy was present before 1972; and (2) requiring "non-littoral property owners to show that they are, in fact, entitled to a mooring that was present before 1972 and that they received permission to anchor from an applicable state or federal agency with jurisdiction in Lake Tahoe."

With respect to the present application, the USACE "grandfathered" letter and other evidence submitted supports that there has been a buoy in the location of the claimed buoy since 1966. This satisfies the first prong of the required showing under Code Section 84.3.3.D.3.b.

There is, however, no evidence that any party ever received permission from an applicable state or federal agency to place a buoy. The TPHA appears to have requested the required approval from CSLC for its buoy field, but there is no evidence that the CSLC ever granted such approval. Even if the CSLC had approved a lease for a homeowners' association buoy field, this would not show the required link between the claimed buoy's location and the Rubicon Avenue lot.

The presented evidence shows that the owner of a separate parcel on Doe Avenue received permission from TPHA to moor a boat on buoy 11, and that the owner of the Doe Avenue parcel gave permission to the applicant's father to moor a boat on that buoy. There is no evidence in the affidavit or other materials submitted showing that the claimed buoy has ever been legally associated with the applicant's non-littoral parcel. As such, the application is denied.

Pursuant to Rule 11.2 of the TRPA Rules of Procedure, this decision may be appealed within twenty-one (21) days of the date of this correspondence. A Notice of Appeal application is included with this letter. The appeal application filing fee is $1,235, plus a $146 Information Technology surcharge.

Thank you for your attention to this matter. If you have questions, please contact me by phone at (775) 589-5337 or by email at gstmichel@trpa.gov.

Sincerely,

Graham St. Michel
General Counsel

CC: Garrett D. Gordon
Womble Bond Dickinson (US) LLP
Garrett.Gordon@wbd-us.com
One East Liberty Street, Suite 300
Reno, NV 89501-2128

Wendy Jepson, Current Planning Manager, Tahoe Regional Planning Agency
Matt Miller, Senior Environmental Specialist, Tahoe Regional Planning Agency

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NOTICE OF APPEAL INFORMATION PACKET

I. OVERVIEW

This packet shall be used for appealing a decision by the Tahoe Regional Planning Agency (TRPA) or a final decision made by a lead agency regarding an activity or project within a conforming Area Plan pursuant to a Memorandum of Understanding (MOU).

Appeal of a TRPA Decision

Executive Director decisions or actions on projects or other matters may be appealed to the TRPA Governing Board. This includes approval of a project, denial of a project, conditions of approval for a permit and decisions by staff or Hearing Officer. Final action by the Executive Director may be appealed to the Governing Board by filing this application with TRPA, including the required appeal fee, no later than 21 days after the final action (date of correspondence). Unless TRPA and the appellant agree in writing to a different deadline, the written statement of appeal must be received by the Agency within 30 days after the filing of the notice of appeal. Appeals will be processed pursuant to Article 11 and 14 of the Rules of Procedure.

Appeal of a Lead Agency Decision

An appeal of a final decision made by a lead agency regarding an activity or project within a conforming Area Plan pursuant to a MOU may only be filed by an "aggrieved person" as defined in Article V(j)(3) of the TRPA Compact. The basis for an appeal shall be limited to whether the decision by a lead agency is in accordance with an approved Area Plan and its implementing ordinances consistent with the Regional Plan and Compact. Appellants who are subject to the exhaustion provision in Compact Article VI(j)(3) shall exhaust all administrative remedies provided by the lead agency prior to appealing a decision to TRPA. An appellant shall file an appeal application to TRPA within 15 calendar days of the final lead agency decision. Decisions by the lead agency under independent local, state, or federal law are not subject to this appeal process. Appeals will be processed in accordance with TRPA Code, Section, 13.9: *Appeals*.

For any questions regarding information within this packet, please call 775-589-5333 or email TRPA@trpa.gov to speak with a permitting technician.

II. NOTICE OF APPEAL CHECKLIST ITEMS

To submit an online Notice of Appeal Application, click here. The following section contains a checklist of items to be submitted with your application.

- ☐ **Completed and signed application form.**
- ☐ **Application filing fee.**
- ☐ **Written statement to support the appeal claim.**
- ☐ **Documentation to support the appeal claim.** Additional documentation may be provided by the lead agency to augment the record.

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NOTICE OF APPEAL APPLICATION

Applications to TRPA can be submitted online through Accela Citizen Access. For assistance submitting a form or application online, please call 775-589-5333 or visit the TRPA front lobby.

Applicant_____

Mailing Address _____City_____State_____

Zip Code _____ Email _____ Phone _____

Representative or Agent _____

Mailing Address _____ City_____State_____

Zip Code _____ Email _____ Phone _____

Owner _____☐**Same as Applicant**

Mailing Address _____ City_____State_____

Zip Code _____ Email _____ Phone _____

Project Location/Assessor's Parcel Number (APN): _____

Street Address _____

County _____ Previous APN(s) _____

Local Jurisdiction Contact/Title_____**Phone**_____

File Number_____

Property Restrictions/Easements *(List any deed restrictions, easements or other restrictions below in the space provided.)*

☐ None _____

_____

I hereby declare under penalty of perjury that all property restrictions and easements have been fully disclosed. **Initial here:**_____

Property Access & Restriction Information: (gates, dogs, etc.) ☐ **YES** ☐ **NO**

If yes, describe:_____

Application Continues on Next Page

SIGNATURES

DECLARATION BY PROPERTY OWNER

I hereby declare under penalty of perjury that this application and all information submitted as part of this application is true and accurate to the best of my knowledge. I am the owner of the subject property or have been authorized in writing by the owner(s) of the subject property to represent this application, and I have obtained authorization to submit this application from any other necessary parties holding an interest in the subject property. I understand it is my obligation to obtain such authorization, and I further understand that TRPA accepts no responsibility for informing these parties or obtaining their authorization. By submitting this application, I agree to all TRPA regulations regarding Project Review as stated in Article 5 of the TRPA Rules of Procedure and other TRPA regulatory documents, including the TRPA application fee refund policy. I acknowledge that once the application is submitted, if I withdraw it for any reason, I will not be entitled to a full refund, and the amount of any refund will be determined by TRPA.

I understand that should any information or representation submitted in connection with this application be inaccurate, erroneous, or incomplete, TRPA may rescind any approval or take other appropriate action. I hereby authorize TRPA to access the property for the purpose of site visits. I understand that additional information may be required by TRPA to review this project.

Signature:

_____ At _____ Date: _____

Owner or Person Preparing Declaration Form **County**

DECLARATION OTHER THAN PROPERTY OWNER

I hereby declare under penalty of perjury that this application and all information submitted as part of this application is true and accurate to the best of my knowledge. I understand that should any information or representation submitted in connection with this application be inaccurate, erroneous, or incomplete, TRPA may take appropriate action. I understand that additional information may be required by TRPA to process this application.

Signature:

_____ At _____ Date: _____

Person Preparing Declaration Form **County**

AUTHORIZATION FOR REPRESENTATION

Complete this section only if an agent or consultant is submitting this application on behalf of the property owner.

The following person(s) own the subject property **(Assessor's Parcel Number(s)_____)** or have sufficient interest therein (such as a power of attorney) to make application to TRPA:

Print Owner(s) Name(s):_____

I/We authorize _____ to act as my/our representative in connection with this application to TRPA for the subject property and agree to be bound by said representative. I understand that additional information may be required by TRPA beyond that submitted by my representative, to review this project. Any cancellation of this authorization shall not be effective until receipt of written notification of same by TRPA. I also understand that should any information or representation submitted in connection with this application be incorrect or untrue, TRPA may rescind any approval or take other appropriate action. I further accept that if this project is approved, I, as the permittee, will be held responsible for any and all permit conditions.

Owner(s) Signature(s):

_____ Date: _____

_____ Date: _____