TAHOE REGIONAL PLANNING AGENCY

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STAFF REPORT

Date: August 18, 2021

To: TRPA Governing Board

From: TRPA Staff

Subject: Resolution of Enforcement Action: Edgewood Companies; Unauthorized Vegetation Removal and Grading Outside the Grading Season, 180 Lake Parkway, Douglas County, NV, Assessor's Parcel Number 1318-27-001-015.

Summary and Staff Recommendation:
Staff recommends that the Governing Board accept the proposed Settlement Agreement (Attachment A) in which Edgewood Companies ("Edgewood") agrees to restore and protect the disturbed area, pay a $55,000 penalty to TRPA, and contribute $50,000 towards the control and containment of Aquatic Invasive Species ("AIS") along Edgewood Creek and ponds within the Edgewood Tahoe Golf Course for the unauthorized removal of Stream Environment Zone ("SEZ") vegetation and grading outside of the grading season at the property located at 180 Lake Parkway, Douglas County, NV, Assessor's Parcel Number 1318-27-001-015 ("Edgewood Property").

Required Motions:
In order to approve the proposed violation resolution, the Board must make the following motion, based on this staff summary:

A motion to approve the Settlement Agreement as shown in Attachment A.

In order for the motion to pass, an affirmative vote of any 8 members of the Board is required.

Violation Description/Background:
In February 2021, TRPA staff inspected a complaint at the Edgewood Property for unauthorized vegetation removal along the shoreline of Lake Tahoe. During this inspection, TRPA staff discovered approximately 125 feet of willows along Edgewood creek and the shoreline were cut to the ground without any TRPA authorization causing disturbance to sensitive Tahoe Yellow Cress ("TYC") habitat. It was also discovered that Edgewood removed approximately ten cubic yards of soil for construction of a temporary ice rink for an upcoming event on the Edgewood Property.

After further investigation and discussion with Edgewood Representatives, TRPA staff determined that Edgewood staff had performed the unauthorized work from the request of the NHL Hockey league and made these decisions with clear knowledge of TRPA rules and regulations. The removal of SEZ vegetation, unauthorized grading and disturbance to sensitive plant habitat occurred in violation of TRPA Code Section 2.3.2.D (Excavation, filling, or backfilling for a volume not in excess of three cubic yards, provided the activity is completed within a 48-hour period and the excavation site is stabilized to prevent erosion); TRPA Code Section 33.3.1.A (Excavation, filling, and clearing of vegetation or other

disturbance of the soil shall not occur between October 15 and May 1 of each year); TRPA Code Section 33.3.1.C (Grading is prohibited at any time of the year during periods of precipitation and for the resulting period of time when the site is covered with snow or is in a saturated, muddy, or unstable condition); TRPA Code Section 30.5.2.E: Indigenous vegetation shall not be removed or damaged in Land Capability District 1b (Stream Environment Zone) unless otherwise authorized under TRPA permit); TRPA Code Section 61.3.6 (Projects and activities in the vicinity of sensitive plants or their associated habitat shall be regulated to preserve sensitive plants and their habitat. All projects or activities that are likely to harm, destroy, or otherwise jeopardize sensitive plants or their habitat shall fully mitigate their significant adverse effects. Projects and activities that cannot fully mitigate their significant adverse effects are prohibited); TRPA Code Section 80.4.1 (No naturally occurring vegetation shall be manipulated or disturbed except in accordance with Chapter 30. No planting of new vegetation, or manipulation of naturally occurring vegetation, shall be permitted in the shorezone, unless such activities comply with the standards in Chapter 30); and TRPA Code Section 82.3.1 (An activity which is not specifically exempt (pursuant to Section 82.4), qualified exempt (pursuant to Section 82.5), or a continuation of an existing use (pursuant to Section 81.6), is subject to TRPA review and approval).

Although Edgewood has taken full responsibility for the unauthorized activities and has agreed to a settlement where they will restore and protect the disturbed area, pay a penalty of $55,000 to TRPA, and contribute $50,000 towards the control and containment of AIS along Edgewood Creek and ponds within the Edgewood Tahoe Golf Course.

Regional Plan Compliance:
The Tahoe Regional Planning Compact Article VI (k), Compliance, provides for enforcement and substantial penalties for violations of TRPA ordinances or regulations. The proposed resolution complies with all requirements of the TRPA Goals and Policies, Plan Area Statements, and Code of Ordinances.

Contact Information:
For questions regarding this agenda item, please contact Steve Sweet, Code Compliance Program Manager, at (775) 589-5250 or ssweet@trpa.gov.

Attachments:
A. Settlement Agreement

Attachment A

Settlement Agreement

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SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Edgewood Companies ("Edgewood") and the Tahoe Regional Planning Agency ("TRPA"). This Settlement Agreement represents the full and complete compromise and settlement of certain violations alleged by TRPA, as described below:

In February 2021, The Tahoe Regional Planning Agency (TRPA) inspected the Property located 180 Lake Parkway, Douglas County, NV, Assessor's Parcel Number 1318-27-001-015 and found that the following violations of the TRPA Code of Ordinances had occurred:

1. TRPA Code Section 2.3.2.D: Excavation, filling, or backfilling for a volume not in excess of three cubic yards, provided the activity is completed within a 48-hour period and the excavation site is stabilized to prevent erosion. The following exemptions shall not be construed to exempt a series of excavations that collectively would constitute a project. *Grading of more than 3 cubic yards was done without authorization as part of the National Hockey League (NHL) Temporary Activity.*

2. TRPA Code Section 33.3.1.A: Excavation, filling, and clearing of vegetation or other disturbance of the soil shall not occur between October 15 and May 1 of each year, unless approval has been granted by TRPA pursuant to subparagraph B below. Prior to October 15, all construction sites shall be winterized pursuant to subparagraph D below. *Grading for the NHL project was done in February and does not comply with this section. Vegetation was cut during the winter months.*

3. TRPA Code Section 33.3.1.C: grading is prohibited at any time of the year during periods of precipitation and for the resulting period of time when the site is covered with snow or is in a saturated, muddy, or unstable condition. *Grading for the NHL project was done during times of precipitation or ground saturation.*

4. TRPA Code Section 30.5.2.E: Indigenous vegetation shall not be removed or damaged in Land Capability District 1b (Stream Environment Zone) unless otherwise authorized under TRPA permit… *Approximately 125 linear feet of indigenous shorezone vegetation cut without authorization.*

5. TRPA Code Section 61.3.6: Projects and activities in the vicinity of sensitive plants or their associated habitat shall be regulated to preserve sensitive plants and their habitat. All projects or activities that are likely to harm, destroy, or otherwise jeopardize sensitive plants or their habitat shall fully mitigate their significant adverse effects. Projects and activities that cannot fully mitigate their significant adverse effects are prohibited… *The violation area is mapped Tahoe Yellow Cress (TYC) habitat. The cutting of willows in the area may jeopardize the Tahoe Yellow Cress habitat and is prohibited. This location is an annual TYC monitoring site with 41 years of data. Recent surveys showed TYC stem counts of 490 – 1,330.* https://monitoring.laketahoeinfo.org/MonitoringSite/Detail/114

6. TRPA Code Section 80.4.1: No naturally occurring vegetation shall be manipulated or disturbed except in accordance with Chapter 30. No planting of new vegetation, or manipulation of naturally occurring vegetation, shall be permitted in the shorezone, unless such activities comply with the standards in Chapter 30. *Approximately 125 linear feet of naturally occurring shorezone vegetation was cut without authorization.*

7. TRPA Code Section 82.3.1: An activity which is not specifically exempt (pursuant to Section 82.4), qualified exempt (pursuant to Section 82.5), or a continuation of an existing use (pursuant to Section 81.6), is subject to TRPA review and approval. *Vegetation removal in the shorezone is not an exempt activity. Removing vegetation in the shorezone requires TRPA approval.*

This Settlement Agreement is conditioned upon approval by the TRPA Governing Board. Execution of the Agreement prior to Board action shall not be binding on either party in the event that the Board does not authorize settlement on the terms set forth below:

In order to fully resolve the matter, the parties hereby agree as follows:

1. Edgewood shall pay TRPA $55,000 within 30 days of Governing Board approval of this Settlement Agreement.

2. In collaboration with the Tahoe Resource Conservation District, Edgewood shall contribute $50,000 towards the control and containment of AIS along Edgewood Creek and ponds within the Edgewood Tahoe Golf Course above and beyond monies that Edgewood would otherwise expend or benefit from.

3. Edgewood shall work with the TRPA Forester to implement a willow restoration and management plan for the disturbed area. During restoration, the disturbed area will be blocked off and identified as a protected area.

4. If Edgewood fails to comply with any of the actions required by this Settlement Agreement, Edgewood confesses to judgment against them and in favor of TRPA in the amount of $210,000 (payable immediately) and an injunction to enforce the terms of this Settlement Agreement. Edgewood also agrees to pay all reasonable attorneys' fees and costs associated with collecting the increased settlement of $210,000. Notwithstanding the foregoing, the confession of judgment shall not be filed unless TRPA has provided Edgewood with written notice of default and notice to cure such default within ten days of the date of written notice. If the default has not been cured by that time, TRPA may file the confession of judgment.

5. Once Edgewood has fully complied with all of the terms herein, TRPA shall release Edgewood of all claims arising out of their failure to follow TRPA procedures during the activities described in this Settlement Agreement.

Edgewood has read this Settlement Agreement and understands all of its terms. Edgewood has executed this Settlement Agreement after opportunity to review the terms with an attorney and acknowledges that the above-described activities constitute a violation of TRPA regulations. Edgewood agrees to comply with all applicable TRPA requirements in the future.

Signed:

_____	_____
Edgewood Companies	Date
_____	_____
Joanne S Marchetta, Executive Director Tahoe Regional Planning Agency	Date