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### Staff Report

Date: November 13, 2024

To: TRPA Governing Board

From: TRPA Staff

Subject: Resolution of Enforcement Action: Tahoe Keys SMI, LLC, a Delaware limited liability company ("Suntex"); Unauthorized moorings, Failure to install and maintain water quality best management practices, Failure to pay mooring registration fees, Unauthorized coverage, 2435 East Venice Drive, South Lake Tahoe, CA, (Assessor's Parcel Numbers 022-210-032, -040, & -044).

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**Requested Action:** Governing Board approval of the proposed Settlement Agreement.

**Staff Recommendation:** Staff recommends that the Governing Board approve the proposed Settlement Agreement (Attachment A), in which Tahoe Keys SMI, LLC ("Suntex") agrees to resolve the outstanding compliance issues outlined below.

**Required Motion:** To approve the proposed violation resolution, the Board must make the following motion, based on this staff report and the evidence in the record:

- 1) A motion to approve the Settlement Agreement as set forth in Attachment A.

An affirmative vote of any eight Board members is required to pass this motion.

**Background/Summary of Violations:**

Suntex, the owner and operator of Tahoe Keys Marina (TKM), acquired TKM in early 2022. Following this acquisition, Suntex sought TRPA's review for verification of boat slips and upland coverage. TRPA's assessment found 305 operating boat slips, which exceeds the 239 slips recognized under the Tahoe Keys Marina Master Plan. Additionally, TRPA identified the condition of several slips and dock infrastructure as a potential threat to water quality and public safety. Suntex expressed a desire to work with TRPA to resolve numerous outstanding compliance issues at TKM. The proposed Settlement Agreement would address the following violations:

- The existence of 66 unpermitted boat slips that TRPA considers unauthorized, in violation of permit requirements for mooring structures under TRPA Code section 84.3;
- Unpaid annual mooring registration fees, in violation of TRPA Rules of Procedure article 16.8.1;

- Failure to maintain proper best management practices (BMPs) to protect water quality, in violation of TRPA Code section 60.4;
- Unauthorized land coverage, which is a violation of TRPA Code section 30.4.

Summary of Resolutions under the Settlement Agreement:

The key terms of the Settlement Agreement, as negotiated between TRPA and Suntex, include:

- Reconstruction of Slips and Compliance with BMPs: Suntex agrees to replace the 305 boat slips, which are currently deteriorating and threatening water quality. Reconstruction would be limited to the existing footprint, and would consist of fully enclosed flotation material.
- Mooring Fee Payments: Suntex will pay all outstanding fees associated with the marina's moorings.
- Aquatic Invasive Species (AIS) Management: Suntex will submit an AIS Management Plan, consistent with TRPA Code Section 84.6.2.B, and an AIS Control Plan per TRPA Code section 84.6.2.B.2.
- Coverage: TRPA would agree to recognize 153,059 square feet of land coverage on APN 022-021-040 of the marina, which is an approximate middle point between the amount of coverage "allocated" to the parcel under a 1988 settlement agreement (108,185 square feet) and the amount of coverage Suntex contends may be considered legally existing on the parcel (197,934 square feet). Suntex agrees to pay \$1.86 for every square foot of coverage representing the difference between 108,185 square feet and 153,059 square feet ((153,059-108,185) x 1.86 = \$83,465.64).
- Permit Requirements for Additional Slips and Concessions: Suntex will submit complete applications for approval of the 66 additional boat slips, and applications for approval of water-oriented concession operations, in conformance with all necessary requirements, by October 2027.

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.

For questions regarding this agenda item, please contact Tiffany Good, Permitting Program Manager at [tgood@trpa.gov](mailto:tgood@trpa.gov) or 775-589-5283.

To submit a written public comment, email [publiccomment@trpa.gov](mailto:publiccomment@trpa.gov) with the appropriate agenda item in the subject line. Written comments received by 4 p.m. the day before a scheduled public meeting will be distributed and posted to the TRPA website before the meeting begins. TRPA does not guarantee written comments received after 4 p.m. the day before a meeting will be distributed and posted in time for the meeting.

Attachment:

A. Settlement Agreement

Attachment A  
Settlement Agreement



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## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made by and between Tahoe Keys SMI, LLC, a Delaware limited liability company (“Suntex”), and the Tahoe Regional Planning Agency (“TRPA”) (collectively, “Parties”). This Agreement represents the full and complete compromise and settlement of certain violations alleged by TRPA, as described below:

### **RECITALS**

A. Suntex owns and operates the Tahoe Keys Marina located at 2435 Venice Drive, South Lake Tahoe, CA, Assessor’s Parcel Numbers 022-021-021, 032, 040 and 044 (“TKM”).

B. TRPA has identified that TKM currently has a larger number of slips than referenced in the Tahoe Keys Marina Master Plan and 2002 Settlement Agreement between TRPA and the League to Save Lake Tahoe.

C. Suntex has 305 operational slips at TKM (“305 Operational Slips”).

D. The Tahoe Keys Master Plan identifies only 239 slips.

E. TRPA considers the 66 operational slips in excess of the 239 slips identified by the Tahoe Keys Master Plan (the “Additional 66 Slips”) to be unauthorized moorings and their use to be continuing violations of multiple provisions of the TRPA Code of Ordinances.

F. Suntex disputes that any of the 305 Operational Slips are illegal or unauthorized based upon the number of TKM slips identified in historical regulatory permits.

G. TRPA considers TKM to also be in violation of TRPA requirements to (1) install and maintain water quality best management practices per TRPA Code section 60.4, and (2) to pay for mooring registration fees per TRPA Rules of Procedure section 16.8.1.

H. The Parties also disagree over the amount of total land coverage that may be placed on APN 022-021-040. TRPA recognizes 108,185 square feet of allowable coverage, which was allocated pursuant to the 1988 Litigation Settlement Agreement in the matter of State of California v. Dillingham Development Co., while Suntex contends there is a greater amount of existing coverage based on historical records.

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

1. The above recitations are true and correct and are incorporated herein by reference.

2. Subject to TRPA's approval of the plan described in Paragraph 3, Suntex shall reconstruct the 305 Operational Slips to prevent discharge of materials to surface waters. For purposes of this paragraph, "reconstruct" has the same meaning as, and is limited to, "reconstruction" as defined in Chapter 90 of the TRPA Code of Ordinances. Notwithstanding the foregoing sentence, TRPA may at its discretion allow minor reconfiguration of existing facilities, such as to add or widen gangways or walkways to improve ADA accessibility, or move existing fingers within the marina, that does not result in an addition to the existing footprint or an expansion of use. Any expanded polystyrene (including, but not limited to, fusion of polymer spheres, injection molding, foam molding, and extrusion blow molding) or other plastic foam used as part of the new reconstruction shall be fully enclosed and contained in a shell made of aluminum, concrete, steel or plastic (including HDPE) with a minimum thickness of 0.15 inches.
3. Within 90 days of approval of this Agreement by the TRPA Governing Board ("Governing Board"), Suntex shall submit a reconstruction plan to TRPA that meets the requirements of Paragraph 2, with such timeframe subject to reasonable extension by agreement of the Parties. TRPA agrees to review and respond to the reconstruction plan within 60 days of receipt. Suntex shall not commence reconstruction until TRPA provides written approval of the reconstruction plan.
4. Suntex shall pay TRPA all outstanding mooring registration fees for the 305 Operational Slips. All fees shall be paid within 90 days of Governing Board approval of this Agreement. Neither TRPA approval of the reconstruction plan described above nor payment of fees for all 305 Operational Slips shall entitle Suntex to receive approval or formal recognition of the legal existence of the Additional 66 Slips in excess of the 239 slips specified in the TKM Master Plan; Suntex must comply with all of the conditions of this Agreement, except for those outlined in Paragraph 10, before formal approval and recognition of the Additional 66 Slips.
5. Suntex shall prepare an Aquatic Invasive Species ("AIS") Management Plan per TRPA Code section 84.6.2.B.1, to be submitted to TRPA within 90 days of Governing Board approval of this Agreement.
6. Suntex shall prepare an AIS Control Plan per TRPA Code section 84.6.2.B.2. for the TKM within 90 days of Governing Board approval of this Agreement.
7. Suntex shall apply for a clean marina certification within 90 days of Governing Board approval of this Agreement.
8. Suntex shall purchase and operate one non-motorized decontamination unit (i.e., CD3 machine) within the TKM by May 1, 2025.
9. Suntex shall submit an interim BMP plan within 90 days of Governing Board approval of this Agreement. The plan shall be implemented no later than October 15, 2025. The full permanent BMP implementation shall take place with the proposed redevelopment of the site and occur within a specified timeframe in the future redevelopment permit. Failure to timely initiate the permitting process for the proposed redevelopment of the upland portions of the site will trigger the required implementation of a TRPA-approved permanent BMP plan.

10. Suntex shall work with TRPA on an interim concession operation plan until a concession permit can be issued. The plan will include the number of operators and how each one operates within the marina. This plan will be updated and approved by TRPA if there is any change in operation including new concessions and increased number of watercraft. Within 90 days of Governing Board approval of the Agreement, Suntex shall submit to TRPA the following items pertaining to all currently operating water-oriented outdoor recreation concessions for the review and approval of the interim operation plan:

Name of each concession

Number and type of vessels associated with each concession

Number of people each watercraft will hold at a time

Description of how each concession operates (e.g. charter or self-operated)

Evidence of upland facilities including but not limited to parking, restrooms, trash, and fueling.

Suntex shall submit a complete application for all concessions no later than October 1, 2027. If a complete project application is not submitted by that date, Suntex shall immediately ensure the cessation of all concessions operating in TKM. The application for concessions will be reviewed for compliance with TRPA permitting requirements, which shall include but may not be limited to additional PAOTS (persons at one time), parking, fueling, restrooms, and other applicable upland support facilities. The interim concession operation plan described in this Paragraph 10 will allow existing concessions to continue pending TRPA's review of Suntex's complete application for concessions described herein, but the interim plan shall not be construed as approving existing concessions beyond such review.

11. Suntex shall submit a complete project application for the Additional 66 Slips no later than October 1, 2027. If a complete project application is not submitted by that date, Suntex shall immediately cease use of the Additional 66 Slips.
12. Subject to Suntex's compliance with the terms and conditions set forth in this Agreement, TRPA will facilitate the formal recognition and allocation of the Additional 66 Slips to Suntex by timely processing the completed project application described in Paragraph 11. Should the Governing Board deny approval of the project application described in Paragraph 11, Suntex reserves its right to pursue its claim that the Additional 66 Slips are legal and authorized, provided however that the Additional 66 Slips shall not be used until the Governing Board approves a subsequent project application for the Additional 66 Slips or Suntex's claim is otherwise resolved in its favor.
13. TRPA agrees to recognize a maximum of 153,059 square feet of existing land coverage on APN 022-021-040, provided, however, that Suntex shall pay a non-refundable and non-transferable fee of \$1.86 for every square foot of land coverage in excess of 108,185 square feet. This fee shall be paid no later than when the permit for the future upland redevelopment is acknowledged. This provision does not affect the applicability of excess coverage mitigation fee requirements. No further coverage on APN 022-021-040 shall be recognized as legally existing and any transfer of coverage beyond the maximum recognized herein shall be consistent with the terms of the Dillingham Settlement Agreement.

14. If Suntex fails to substantially comply with any of the actions required by this Agreement, Suntex confesses to judgment against it and in favor of TRPA in the amount of \$50,000 (payable immediately) and an injunction to enforce the terms of this Agreement. Suntex also agrees to pay all reasonable attorneys' fees and costs associated with enforcing this Agreement. Notwithstanding the foregoing, the confession of judgment shall not be filed unless TRPA has provided Suntex with written notice of default and notice to cure such default within 45 days of the date of written notice of default. If the default has not been cured within 45 days, TRPA may file the confession of judgment. However, if any alleged default cannot reasonably be cured within said 45-day period, the date for filing the confession of judgment shall be extended for such time as may reasonably be required to cure such default. In no event will Suntex be declared in default for failure to meet a deadline set forth herein based upon TRPA's or any other regulatory agency's delay in processing any timely submitted application or other submittal described in this Agreement.
15. Once Suntex has fully complied with all of the terms herein, TRPA shall release Suntex and the TKM of all claims arising out of the violations alleged in the Recitals above.
16. This Agreement is conditioned upon approval by the TRPA Governing Board. Execution of the Agreement prior to Governing Board action shall not be binding on either Party if the Board does not authorize settlement on the terms set forth herein.
17. Other than as specifically relevant to resolving the violations alleged herein, this Agreement does not modify or interpret the terms of the Dillingham Settlement Agreement, and any interpretations necessary to address such violations shall not be considered binding in any future matter beyond the scope of this Agreement. Furthermore, this Agreement shall not be construed as binding on any other party to the Dillingham Settlement Agreement, other than the Parties as defined herein.

Signed

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Tahoe Keys SMI, LLC

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Date

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Julie W. Regan, Executive Director  
Tahoe Regional Planning Agency

\_\_\_\_\_  
Date