
STAFF REPORT

Date: May 19, 2021

To: TRPA Governing Board

From: TRPA Staff

Subject: Resolution of Enforcement Action: Action Water Sports and Hyatt Regency Lake Tahoe Hotel; Unauthorized placement of Buoys in Lake Tahoe, 998 Lakeshore Blvd., Incline Village, NV, Assessor's Parcel Number 127-280-02.

Summary and Staff Recommendation:

Staff recommends that the Governing Board accept the proposed Settlement Agreement (Attachment A) in which Action Water Sports ("AWS") and the Hyatt Regency Lake Tahoe Hotel ("Hyatt") agree to pay a \$90,000 penalty to TRPA, implement a number of education and safety processes during the summer watercraft rental operations, and obtain a watercraft concession permit for the Hyatt pier for the placement of 10 unauthorized buoys in Lake Tahoe as part of the Hyatt watercraft concession located at 998 Lakeshore Blvd., Incline Village, NV, Assessor's Parcel Number 127-280-02 ("Hyatt Property").

Required Motion:

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

- 1) 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:

On August 21, 2020, TRPA staff responded to a complaint of unauthorized moorings along the shoreline near the Hyatt Property. During the inspection, staff found that 10 additional moorings in front of neighboring properties to the east of the Hyatt Property had been placed without any authorization. It was noted that all additional moorings had similar anchoring devices used by AWS and some of the watercraft attached were identified as being owned, operated, or managed by Action Water Sports as part of the Hyatt watercraft concession.

On August 26, 2020, TRPA issued a Cease and Desist Notice to Action Water Sports requiring the removal of all unauthorized moorings associated with or occupied by AWS. Gary Scott ("Scott"), owner of AWS, notified TRPA on September 8, 2020 that three of the 10 unauthorized moorings had been removed from the water.

On September 14, 2020, after further investigation, TRPA issued a second Cease and Desist Notice to both the Hyatt and AWS requiring that the Hyatt and Action Water Sports concession operation remain only on the Hyatt Property and within the Hyatt buoy field and that all unauthorized moorings were

removed immediately. On September 22, 2020, AWS confirmed that all remaining, unauthorized moorings had been removed.

In following discussions with Gary Scott ("Scott"), TRPA staff determined that AWS had placed the unauthorized moorings outside of the Hyatt mooring field and were rotating the watercraft from the Hyatt concession along with other AWS/Hyatt mooring rentals for most of the season. The use of moorings in front of neighboring properties is not allowed by the Hyatt or Action Water Sports commercial operation and occurred in violation of 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; TRPA Code Section 84.10.1.A: Watercraft which remain in the shorezone or lakezone overnight shall be moored to legally existing buoys, boatlifts, boat slips, or other legally existing watercraft storage facilities; and TRPA Code Section 84.10.2.C.4.a: Concessions shall moor on legally permitted mooring structures.

Scott made these decisions with clear knowledge of TRPA rules and regulations and persisted in this unauthorized activity for an additional 3 weeks after receiving the first Cease and Desist Notice. TRPA settled a violation for \$30,000 in 2017 with AWS for unauthorized placement of additional moorings within the Hyatt buoy field. AWS continues to dispute the alleged violations, but in the interest of reaching an amicable resolution, has agreed to pay a penalty of \$90,000 to TRPA and implement a number of education and safety processes during the summer watercraft rental operations. AWS and Hyatt will obtain a watercraft concession permit for the Hyatt pier by June 30, 2021.

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

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Action Water Sports of Incline Village, LLC, (“AWS”), Hyatt Regency Lake Tahoe Hotel (“Hyatt”), 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 August 2020, TRPA inspected the watercraft concession operations conducted by AWS located at 998 Lakeshore Blvd., Incline Village, NV, Assessor’s Parcel Number 127-280-02 (“Hyatt Property”) and that the following violations of the TRPA Code of Ordinances had occurred:

1. 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. *Unauthorized mooring and placement of 10 additional temporary mooring buoys.*
2. TRPA Code Section 84.10.1.A - Watercraft which remain in the shorezone or lakezone overnight shall be moored to legally existing buoys, boatlifts, boat slips, or other legally existing watercraft storage facilities. The following types of overnight mooring, including anchoring, are exempt from this provision. *Unauthorized anchoring on 10 temporary mooring buoys for reasons that do not meet the exemptions for this activity.*
3. TRPA Code Section 84.10.2.C.4.a - Concessions shall moor on legally permitted mooring structures. *Unauthorized placement and use of 10 additional mooring buoys outside of the Hyatt buoy field.*

This Settlement Agreement is conditioned upon approval by the TRPA Governing Board. Execution of this 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. AWS shall pay TRPA \$90,000 within 30 days of Governing Board approval of this settlement agreement.

2. AWS understands that it can be an advocate and principal supporter safety and environmentally sensitive boating on Lake Tahoe. In accordance with the goal, AWS shall do the following:
 - a. AWS shall provide to its customers TRPA-printed materials,
 - b. AWS shall provide additional education to all watercraft renters that includes following all TRPA watercraft rules and directions of how to download and use the Lake Tahoe Boating Application,
 - c. AWS shall train its staff so they are capable of educating the public on applicable watercraft rules and regulations,
 - d. AWS shall equip all of its boats with a GPS system that allows its operators/customers to know when the vessel is within the TRPA's no-wake zone, and
 - e. AWS shall partner with the League to Save Lake Tahoe Lake Tahoe to conduct a boater education and safety clinic to inform boaters about watercraft rules and other boating tips for safe boating on Lake Tahoe.

AWS and Hyatt will only moor AWS-controlled watercraft within the Hyatt buoy field and each watercraft will be located on one of the 48 permitted buoys. Absent emergency situations, AWS or Hyatt will not moor any boats on temporary moorings or on a mooring permitted for noncommercial purposes. AWS and Hyatt may continue to the watercraft concession on the Hyatt pier until they receive a permit from TRPA for that activity or June 30, 2021, whichever occurs first.

3. If AWS fails to pay the \$90,000 required by this Settlement Agreement and TRPA files litigation to enforce this Settlement Agreement, AWS agrees to pay TRPA the amount of \$180,000 (payable immediately) and to the issuance by the court of an injunction to enforce the terms of this Settlement Agreement. AWS also agrees to pay all reasonable attorneys' fees and costs associated with collecting the increased settlement payment of \$180,000. Notwithstanding the foregoing, the litigation enforcing this agreement shall not be filed unless TRPA has provided AWS 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 its enforcement action.
4. Once AWS has paid the settlement amount and has fully complied with all of the terms herein, TRPA shall release both parties of all claims arising out of their failure to follow TRPA procedures during the activities described in this Settlement Agreement.
5. This agreement does not alter any rights to appeal a TRPA permit through the process outlined in Article 11 of TRPA's rules of procedure, or other law governing the TRPA administrative process.

AWS and Hyatt have read this Settlement Agreement and understand all of its terms. AWS and Hyatt have executed this Settlement Agreement after opportunity to review the terms with an attorney and acknowledge that the above-described activities constitute a violation of TRPA regulations. AWS and Hyatt agree to comply with all applicable TRPA requirements in the future.

Signed:

Action Water Sports of Incline Village, LLC

Date

Hyatt Lake Tahoe Hotel

Date

Joanne S. Marchetta, Executive Director
Tahoe Regional Planning Agency

Date