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MEMORANDUM

Date: March 20, 2013

To: TRPA Governing Board

From: TRPA Staff

Subject: Resolution of Enforcement Action: Bowie Hillberg and Bogie Facciolla; Unauthorized Grading, Failure to Install Temporary Erosion Control, and Discharge of Sediment at 517 Fairview, Washoe County, NV (Assessor's Parcel Number 131-211-17)

Requested Action: Governing Board action on the proposed Settlement Agreement.

Staff Recommendation: Staff recommends that the Governing Board accept the proposed Settlement Agreement (Attachment A) in which Hillberg and Facciolla, collectively referred to as the "Settling Parties" agree to collectively pay a \$12,000 fine to TRPA.

Required Motion: In order to approve the proposed violation resolution, the Board must make the following motion, based on this staff summary and the evidence in the record:

A motion to approve the Settlement Agreement as set forth 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: This violation involves unauthorized grading, failure to install adequate temporary erosion control devices (BMPs) on portions of the property, and discharge of sediment at the residence located at 517 Fairview, Washoe County, NV, Assessor's Parcel Number 131-211-17 ("Hillberg Property").

In July 2012, Washoe County issued an encroachment permit for paving, drainage improvements, and landscaping in the right-of-way on the north side of the Hillberg Property. During a routine inspection on October 1, 2012, TRPA staff discovered a large amount of unstable sediment below the residence on the south side of the Hillberg

Property with inadequate temporary erosion control devices in this area of the property. Upon investigation, staff learned that Facciolla had been hired to perform grading and additional landscape work on the Hillberg Property beyond what was approved through the Washoe County encroachment permit. Specifically, approximately 50 cubic yards of soil had been brought to the site and spread across the ground to create a ramp so that heavy construction equipment could access the south side of the Hillberg Property. This created an unstable dirt slope, and because inadequate temporary BMPs were in place in this location, a sediment discharge occurred from the property into the drain inlet located in the right-of-way on the south end of the Hillberg Property.

The unauthorized grading, sediment discharge, and failure to maintain adequate temporary BMPs downhill of the unstable slope violated TRPA Code Section 2.3.2 (requiring a permit for the grading of more than three cubic yards), Section 33.3.2 (prohibiting the indirect discharge of sediment), and Section 64.3 (requiring erosion and siltation control devices to be installed for all grading activities).

The Settlement Agreement requires that the Settling Parties pay a penalty of \$12,000 for the unauthorized work performed. Upon issuance of a correction notice last October, Hillberg had immediately cleaned out the drain inlets around his property and removed the excess soil from the site. The disturbed area has been stabilized for the 2012-2013 winter season and the remaining restoration will be completed in the summer of 2013.

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.

Supporting evidence for making the determination of a violation includes the violation file and photographs of the site. These documents are in TRPA's possession and may be reviewed at the TRPA Offices.

If you have any questions, please contact Steve Sweet, Senior Environmental Specialist at ssweet@trpa.org or 775-589-5250.

Attachments:

Settlement Agreement (Attachment A)



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ATTACHMENT A
PROPOSED SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Bowie Hillberg, Bogie Faccialla, and the Tahoe Regional Planning Agency (TRPA). Hillberg and Faccialla are collectively referred to as the “Settling Parties.” This Settlement Agreement represents the full and complete compromise and settlement of certain violations alleged by TRPA, as described below:

In October 2012, The Tahoe Regional Planning Agency (TRPA) inspected the property located at 517 Fairview Blvd., Washoe County, NV, Assessor’s Parcel Number 131-211-17 (“Hillberg Property”) and found that the following violations of the TRPA Code of Ordinances had occurred:

- TRPA Code Section Code Section 2.3.2 (requiring a permit for the grading of more than three cubic yards);
- TRPA Code Section Code Section 33.3.2 (prohibiting indirect discharge of sediment); and
- TRPA Code Section 33.3.2.C (requiring that erosion and siltation control devices be installed for all grading activities).

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. The Settling Parties shall pay TRPA \$12,000 within 30 days of Governing Board approval of this Settlement Agreement.

2. Hillberg shall restore the disturbed area pursuant to a TRPA approved landscape/restoration plan. The plan shall be fully implemented within 90 days of TRPA approval.
3. If the Settling Parties fail to comply with any of the actions required by this Settlement Agreement, the Settling Parties confess to judgment against them and in favor of TRPA in the amount of \$24,000 (payable immediately) and an injunction to enforce the terms of this Settlement Agreement. The Settling Parties also agree to pay all reasonable attorneys fees and costs associated with collecting the increased settlement of \$24,000. Notwithstanding the foregoing, the confession of judgment shall not be filed unless TRPA has provided the Settling Parties 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.
4. Once the Settling Parties have fully complied with all of the terms herein, TRPA shall release the Settling Parties of all claims arising out of their failure to follow TRPA procedures during the activities described in this Settlement Agreement.

The Settling Parties have read this Settlement Agreement and understand all of its terms. The Settling Parties 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. The Settling Parties agree to comply with all applicable TRPA requirements in the future.

Signed:

Bowie Hillberg

Date

Bogie Facciolla

Date

Joanne S Marchetta, Executive Director
Tahoe Regional Planning Agency

Date