
STAFF REPORT

Date: November 10, 2021

To: TRPA Governing Board

From: TRPA Staff

Subject: Resolution of Enforcement Action: Dana Marlin, Unauthorized Material Damage to Trees, Wren Circle, Douglas County, NV, Assessor's Parcel Number (APN) 1418-27-810-013 and APN 1418-27-810-014.

Summary and Staff Recommendation:

Staff recommends that the Governing Board accept the proposed Settlement Agreement (Attachment A) in which Dana Marlin ("Marlin") agrees to pay a \$29,000 penalty to TRPA for the unauthorized material damage to 14 trees on U.S. Forest Service and the Nevada Division of State Lands properties located at APN 1418-27-810-013 ("USFS Property") and APN 1418-27-810-014 ("NDSL 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:

This violation involves unauthorized material damage to 14 trees located on the adjacent property of 269 Wren Circle, Douglas County, NV, Assessor's Parcel Number 1418-27-810-015 ("Marlin Property"). The affected neighboring properties are owned by the U.S. Forest Service and the Nevada Division of State Lands and are located at the end of Wren Circle in Douglas County, NV.

In June 2021, the Tahoe Regional Planning Agency ("TRPA") inspected a report of unauthorized tree trimming at the end of Wren Circle on both the USFS and NDSL properties. During the inspection, TRPA staff discovered that 5 trees located on the USFS property and 9 trees on the NDSL property larger than 14 inches diameter at breast height ("dbh") had been limbed in the upper two-thirds of the trees' height.

After further investigation and discussion of the issue with both NDSL and USFS, TRPA staff determined that the unauthorized live limb removal provided some view enhancement from the residence on the Marlin Property and that Marlin would have the greatest benefit from the view enhancement. Marlin denied any involvement in the work on both the USFS and NDSL properties.

Live limb removal in the upper two-thirds of the trees height for view enhancement is not allowed without authorization and is a violation of TRPA Code Section 61.1.5 (requiring TRPA approval for the cutting, moving, removing, killing, or materially damaging of live trees, and the attachment of appurtenances to trees, shall comply with this subsection. [...] Removal of trees greater than 14 inches diameter at breast height (dbh) shall require approval by TRPA.). Marlin continues to deny any responsibility for the violations alleged, but is willing to enter into a Settlement Agreement as a compromise of all claims by TRPA. Pursuant to the attached Settlement Agreement, Marlin will pay a penalty of \$29,000 to TRPA for unauthorized material damage to the 14 trees.

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 Dana Marlin (“Marlin”) 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 June 2021, The Tahoe Regional Planning Agency (TRPA) inspected unauthorized tree trimming at Assessor’s Parcel Number 1418-27-810-013 (USFS Property Property) and Assessor’s Parcel Number 1418-27-810-014 (Nevada Division of State Lands Property) located at the end of Wren Circle, Douglas County, NV and found that the following alleged violations of the TRPA Code of Ordinances had occurred:

- TRPA Code of Ordinances § 61.1.5: The cutting, moving, removing, killing, or materially damaging of live trees, and the attachment of appurtenances to trees, shall comply with this subsection. Removal of trees greater than 14 inches diameter at breast height (dbh) shall require approval by TRPA. *Trees affected are greater than 14-inch dbh.*
- TRPA Code Of Ordinances § 90.2: Materially Damaged: As used in subsection 61.1.5, any of the following activities or alterations to a live tree that would require a permit to remove; (1) topping; (2) the removal of live limbs within the upper two thirds of the total tree height; (3) girdling; (4) the application of chemicals harmful to the tree; (5) purposefully exposing the cambium layer; or (6) other damage to the tree that will potentially result in its death or disfigurement, or in a significant increase in its susceptibility to insects or disease. *Live limbs were removed from the upper two thirds of the trees.*

Dana Marlin does not acknowledge any responsibility for the violations alleged, but is willing to enter into this Agreement as a compromise of all claims by TRPA. 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. Marlin shall pay TRPA \$29,000 within 30 days of Governing Board approval of this Settlement Agreement.
2. Within ten (10) days of execution of this Settlement Agreement, Marlin shall deposit \$29,000.00 into the trust account maintained by his counsel, Maurice B. VerStandig, and shall contemporaneous therewith irrevocably direct his counsel to disburse the whole of the foregoing escrowed monies to TRPA within 30 days of Governing Board approval of this Settlement Agreement. Marlin agrees to pay all attorneys’ fees and costs incurred by TPRA in collecting the \$29,000.00 settlement if the monies are not transferred in accordance with this agreement.

3. Once the escrowed funds are paid to TRPA, TRPA shall be deemed to have fully released Marlin – and all relatives of Marlin, by blood or marriage – of all claims arising out of any alleged failure to follow TRPA procedures during the activities described in this Settlement Agreement. Such release shall be self-executing in nature and shall be deemed made without the formality of any further paperwork of the execution of any further documents. TRPA and Marlin are the only parties to this Settlement Agreement, and it does not preclude action from any other person or entity.

Marlin has read this Settlement Agreement and understands all of its terms. Marlin 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. Marlin agrees to comply with all applicable TRPA requirements in the future.

Signed:

Dana Marlin

Date

Julie Regan, Acting Executive Director
Tahoe Regional Planning Agency

Date