
STAFF REPORT

Date: February 19, 2020

To: TRPA Governing Board

From: TRPA Staff

Subject: Resolution of Enforcement Action: Swarn Singh; Unauthorized Disturbance in SEZ Setback and Failure to Follow Construction Winterization Requirements Resulting in Unauthorized Site Disturbance around the Residence and in Protected Areas, 776 Eagle, Incline Village, NV, Assessor's Parcel Number 128-072-01.

Summary and Staff Recommendation:

Staff recommends that the Governing Board accept the proposed Settlement Agreement (Attachment A) in which Swarn Singh ("Singh") agrees to pay a \$45,000 penalty to TRPA for submitting incorrect information on plans and unauthorized site disturbance during the winter construction season at 776 Eagle, Incline Village, NV, Assessor's Parcel Number 128-072-01 ("Singh 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 June 2019, TRPA issued a conditional permit to Singh for a single-family dwelling residence on the Singh Property. The project was acknowledged one year later in June 2019 and commenced construction on September 4, 2019.

On October 14, 2019, TRPA staff inspected the project and found that the site was not winterized, and extensive grading was still needed to get the site in a stable condition to meet the TRPA winterization requirements. TRPA issued a correction notice for the following items not in compliance with provisions of law or conditions of project approval: Fix and maintain temporary erosion control measures to prevent discharge into sensitive stream environment zone, Backfill foundation by hand or remove the stockpiles located onsite, Extend vegetation fencing by SEZ to corner of property line, Remove staging materials located under tree canopies and vegetation, Remove staging materials located on unpaved surfaces, and fix and maintain silt fence. The items were requested to be completed by the end of the week, October 18, 2019.

On October 15, 2019, the next day, TRPA approved a grading season exception for utility work and to backfill the foundation. This grading season exception was to allow Singh more time to complete the grading needed for foundation and utilities and to get the site to a stable condition for winter construction. The grading season exception was good through October 31, 2019 which Singh explained was sufficient time to complete the required items.

On October 25, 2019, TRPA staff inspected the Singh Property and found that some of the required temporary BMPs had still not been fixed allowing a possibility for discharge in to the SEZ. A correction notice was issued to fix and maintain temporary erosion control measures to prevent discharge into sensitive stream environment zone and to notify TRPA immediately once corrections have been completed. Corrections were to be made by end of day 10/25/2019. TRPA was never notified that the corrections were made.

On October 31, 2019 TRPA staff inspected the Singh site to make sure all corrections had been completed and that the site was winterized and could continue construction throughout the winter season. Staff found that the grading and foundation had not been completed and issued another correction notice to complete the backfill and fix temporary BMPs by end of day Thursday, November 6th, 2019.

On October 1, 2019, the next day, TRPA followed up with a phone conversation with Singh expressing the urgency to get the site winterized. Staff explained that any further grading would be allowed through a corrective action to get the site winterized and stable. Singh was given approval to complete the back fill with existing soil onsite or up to 200 yards of clean washed gravel.

On November 6, 2019, TRPA staff conducted a site visit to investigate SEZ disturbance and found evidence of concrete washout discharging directly to the ground. Singh was directed to clean-up the concrete waste immediately. As a result of that inspection and additional research staff also identified that the SEZ setback was drawn incorrectly on the site plan from the original land capability issued to Singh. TRPA followed up two days later, on November 8, 2019 with a request that all grading stop and that the winterization is complete by the end of the day. At that time, staff mentioned that the SEZ setback was drawn incorrectly on submitted plans and there was a possibility that part of the residence could have been constructed in the SEZ setback.

On November 12, 2019, TRPA sent another request by email to Singh and Kristina Hill ("Hill"), Singh's consultant, to winterize the site. Staff reminded Singh that no work other than winterizing the site shall continue until the SEZ setback matter is resolved and that there is no grading season exception at this time. It was made clear to Singh that continuing to import gravel to the site does require a grading season exception.

On November 15, 2019, TRPA staff placed a cease and desist on the Singh Property requiring him to stop all work until the setback matter is resolved. TRPA found that additional grading of soil had occurred around the site without authorization along with bringing in an additional 300 cubic yards of gravel.

Staff determined that the unauthorized construction activities during the winter season occurred in violation of TRPA Code Section 33.3.1.D (All construction sites shall be winterized by October 15 to reduce water quality impacts associated with winter weather), 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), Code Section 33.3.2.B: Indirect discharges to the waters of the region are prohibited unless controlled by discharge devices approved by TRPA), Code Section 33.3.4 (The disposal of solid or liquid materials, including soil, silt, clay, sand, or other organic or

earthen materials must be reviewed and approved by TRPA), Code Section 36.12 (The area of disturbance during construction of a structure shall be limited to the area between the footprint of the building and the public road. For the remainder of the site the disturbance area shall not exceed 12 feet from the footprint of the structure), Code Section 53.9.2 (No buildings, other structures, or land coverage shall be permitted in SEZ setbacks, except in accordance with subsection 30.5.2 and the exception for the backshore set forth in subsection 85.5.4), Code Section 60.1.3.D (The discharge of toxic or hazardous waste to Lake Tahoe, other lakes in the region, their tributaries, the ground waters of the Tahoe region, the lands of the Tahoe region, or the Truckee River within the Tahoe region is prohibited), Code Section 60.4.3.A (Temporary BMPs in accordance with the Handbook of Best Management Practices, and as required in Section 33.5, shall be implemented on construction sites and maintained throughout the construction period until winterization and permanent BMPs are in place).

Singh has explained that the new SEZ setback line was drawn in for him by TRPA staff and then again approved by email by another staff member. TRPA has found no evidence of approving a change to the SEZ or SEZ setback line. Unfortunately, the change was not caught on the final site plans and the residence was approved 5-8 feet into the SEZ setback. After further discussions with Singh and his attorney, Singh has agreed to a settlement where the foundation will remain in place, the disturbed areas around the property and in the SEZ will be restored, and Singh will pay a penalty of \$45,000 to TRPA.

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.org.

Attachment:

- A. Settlement Agreement

Attachment A
Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Swarn Singh (“Singh”) 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:

The Tahoe Regional Planning Agency (TRPA) inspected the Single Family Dwelling Project located at 776 Eagle Drive, Incline Village, NV, Assessor’s Parcel Number 128-072-01 (“Singh Property”) and found that the following violations of the TRPA Code of Ordinances had occurred (referred to herein as the alleged “Violations”):

1. TRPA Code Section 33.3.1.D: All construction sites shall be winterized by October 15 to reduce water quality impacts associated with winter weather as follows: (applicable sub sections) Disturbed areas shall be stabilized; where feasible mechanical stabilization and drainage improvements shall be installed; Parking and operation of vehicles and equipment shall be restricted to paved areas. *The site was not properly winterized by October 15, 2019. TRPA issued an exception because the site was left in an unstable condition. A pregrade was done on 9/4/19 and the site needed to be stabilized by 10/15/19.*
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. *Grading had occurred outside of the approved grading season exception.*
3. TRPA Code Section 33.3.2.B: Indirect discharges to the waters of the region are prohibited unless controlled by discharge devices approved by TRPA. *TRPA observed discharge of concrete waste and washout on the construction site.*
4. TRPA Code Section 36.12: The area of disturbance during construction of a structure shall be limited to the area between the footprint of the building and the public road. For the remainder of the site the disturbance area shall not exceed 12 feet from the footprint of the structure. *BMPs were damaged and removed for staging of material outside of the approved construction area creating additional disturbance under the dripline of trees and in SEZ.*
5. TRPA Code Section 53.9.2: No buildings, other structures, or land coverage shall be permitted in SEZ setbacks, except in accordance with subsection 30.5.2 and the exception for the backshore set forth in subsection 85.5.4. *The SEZ and setback line were misrepresented on submitted plans that resulted in the residence being constructed partially in the SEZ setback.*

6. TRPA Code Section 60.1.3.D: The discharge of toxic or hazardous waste to Lake Tahoe, other lakes in the region, their tributaries, the ground waters of the Tahoe region, the lands of the Tahoe region, or the Truckee River within the Tahoe region is prohibited. *TRPA observed discharge of toxic or hazardous materials on the construction site. Concrete waste is considered toxic and/or hazardous.*
7. TRPA Code Section 60.4.3.A: Temporary BMPs in accordance with the Handbook of Best Management Practices, and as required in Section 33.5, shall be implemented on construction sites and maintained throughout the construction period until winterization and permanent BMPs are in place. *BMPs were not installed on the unpaved, unauthorized staging area.*
8. TRPA Code Section 33.3.4: The disposal of solid or liquid materials, including soil, silt, clay, sand, or other organic or earthen materials must be review and approved by TRPA. *Fill was placed within the dripline of large tree located on the North side of the property and up against the silt fence that borders the SEZ causing damage to the temporary BMPS and allowing soil to be stockpiled in areas outside of the construction boundary including the SEZ.*

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. Upon the execution of this Settlement Agreement, TRPA shall lift the Cease and Desist Order from the Singh Property. Mr. Singh may commence construction prior to May 1, 2020, upon approval by TRPA of a winterization construction plan.
2. Singh shall pay TRPA \$45,000 within 270 days of Governing Board approval of this settlement agreement, to be paid in 3 installments of \$15,000 every 90 days, with the first such payment due 90 days after the Governing Board approves this Settlement Agreement.
3. Singh shall submit a restoration plan for the disturbed areas in the Stream Environment Zone (SEZ), SEZ setback, and around the residence no Later than April 1, 2020. Singh shall follow the TRPA revegetation template found in the TRPA BMP Handbook. Restoration in the SEZ and SEZ setback shall include the following: removal of fill material from construction, recontouring the disturbed area to maintain natural hydrologic function, revegetation with native wetland species from the TRPA approved plant list, all SEZ and SEZ setback restoration will be done by hand. No equipment is allowed in the SEZ or SEZ setback. For the remaining area around the residence and within the driplines of trees, all additional soil will be removed from the site and re-graded to natural contours. All disturbed areas shall be revegetated with upland plant species from the TRPA approved plant list. The Plan will be reviewed and approved by TRPA current planning staff and will become a condition of the permit. The site restoration shall be completed no later than October 1, 2020.
4. If Singh fails to comply with any of the actions required by this Settlement Agreement, Singh confesses to judgment against him and in favor of TRPA in the amount of \$90,000 (payable

immediately), less any payments made by Singh pursuant to this Settlement Agreement, and an injunction to enforce the terms of this Settlement Agreement. Singh also agrees to pay all reasonable attorneys' fees and costs associated with collecting the increased settlement of \$90,000. Notwithstanding the foregoing, the confession of judgment shall not be filed unless TRPA has provided Singh with written notice of default and notice to cure such default within thirty 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. TRPA hereby unconditionally and irrevocably remises, waives, satisfies, releases, acquits, and forever discharges Singh from and against any and all past and present claims, actions, suits, rights, causes of action, lawsuits, controversies, damages, judgments, attorneys' fees, costs, bills, expenses, debts, and liabilities that TRPA has, at the time this Settlement Agreement is executed, against Singh relating to the Violations.

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

Signed:

Swarn Singh

Date

Joanne S Marchetta, Executive Director
Tahoe Regional Planning Agency

Date