

Tue 9/29/2009 3:20 PM

To: John Falk, Joanne Marchetta

cc: Jerry Wells, Gabby Barrett

Hi John,

Thanks for your message and the clear articulation of your concerns. Please see my comments below ([embedded in your text](#)).

I hope that this is helpful. Please feel free to contact me or Gabby Barrett if you need any further clarification.

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28 September 2009

Hello Joanne:

I appreciated your commentary on the buoy recognition program. I took special note of, and wish to express my appreciation for, your willingness to mention to the Governing Board that an extension of the Oct. 15<sup>th</sup> application “deadline” was an option that they could consider. While nobody on the dais took up the suggestion, at least it was verbalized. While the day’s agenda (VII, A.) did not provide a perfect ‘fit’ for my oral testimony, in the context of “clean up amendments to the Shorezone Code” and the ‘catch-all’ of “other amendments to be considered at a later time”, I thought it was important to at least put it out there that the timeline is proving to be too tight to properly address the large number of legitimate buoys that have yet to file for TRPA recognition. With the forms morphing over time, and the outreach proving to be a challenging one, confusion and inaction appear to have taken hold. Your description of the program and its intent did much to allay the fears of some folks in attendance. I was asked by members of my organization after the fact, “so, where do we stand on the whole buoy issue?” As I attempted to articulate the current state-of-

affairs, beyond asserting that the Oct. 15 “deadline” remains in place, I stumbled through a less than satisfactory description of the impact (or lack thereof) for private property buoys when the dreaded Oct. 16<sup>th</sup> date rolls around. Of course, for members who approach me with personal or professional interests in the buoy issue, I simply suggest to them that they (or their clients) get the paperwork across the desk at TRPA’s offices before the deadline. The larger and more amorphous concern involves future lakefront listings and sales that occur after the buoy recognition filing deadline has come and gone. With just under half of the anticipated buoy applications on-file, and less than a third of the anticipated ‘non-buoy moorings’ (boat lifts...) having submitted paperwork to-date, there is a real possibility, perhaps better stated as an inevitability, that some lakefront property sales post-Oct. 15 will be subject to great consternation and debate over the legitimacy of their on-water amenities.

### **This is true. We do not expect to see registrations or permits for all moorings by October 15**

As such, I am hoping that I might impose upon you and/or your staff to provide me with some clarification regarding the TRPA buoy recognition program’s intentions and anticipated upcoming actions. Specific areas of inquiry are listed below.

It is understood that a more focused and informed discussion of the buoy situation is one of the principle intentions of this recognition program. It is further understood that the Agency has no intention to ‘drop the hammer’ on Oct. 16<sup>th</sup> and begin enforcement actions. The question that remains: “What options will ill-informed lakefront property owners have to correct or affirm the status of their buoys and/or non-buoy moorings if they have not submitted paperwork on or before October 15<sup>th</sup> of this year?”

**These applications will be accepted. The level to which enforcement will be taken depends largely on the justification that the applicant gives us as to why they were "ill-informed." Fines are not our goal - identification of legal moorings is our goal. Staff has wide discretion with respect to imposition of fines and will largely forgo them if a reasonable explanation is provided.**

Understanding that the recognition program is an important assessment tool, focusing the next phase's attention on those who do not have paperwork in process... "Will TRPA's follow-up activities for non-compliant buoys and moorings be primarily in the service of getting those unknown items compliant/recognized when/if previously legitimately placed; or, will the push be to have such items removed irrespective of their prior status?"

**The burden of proof of legality is with the applicant. If the moorings are legal, they will stay. If they are not legal, they will be tagged for removal in accordance with adopted ordinances.**

A real and unexpected 'head scratcher' was posed to me by a member, involving ownership rights of buoys. The question was simple enough, "Does a buoy permit run with the applicant (person) or with the land (real property title)?"

My 'gut level' reaction was that such a permit would attach to the property, but I have been wholly unsuccessful in confirming, amending, or rejecting my initial opinion. While a rather unassuming/minor question on its face, as I considered the implications of the matter it took on a level of significance and concern that I had not anticipated. Even inter-state differences became apparent. If a California-side buoy is permitted on Lake Tahoe, does the 'lease' run with the land, or must it be transferred from one owner to the next by some formal process? Does Nevada's approach differ? What entity does TRPA pattern its buoy permit/recognition program after (e.g., CA, NV, Feds...)? The potential consequences of person vs. property 'ownership rights' are alarming for those of us who do not understand just who has standing in this matter, myself included. If buoy leases attach to the applicant, then real estate marketing suggesting that a home is being offered for sale with, say, "two buoys and a pier" would be misguided, albeit unknowingly. Additionally, if such permits run with the person, and that person sells their lakefront property, then they would have a conflict between TRPA's rules requiring that buoy owners possess 50 ft. of lakefront land to qualify for such amenities, and their permitted boat mooring in-hand. Any clarification you might be able to provide on this issue would be of great importance to my members and their clients.

**I believe that the moorings are associated with the property.**

Given the above-mentioned questions, comments, and concerns, I am cautiously hopeful that the decision to retain the Oct. 15 application deadline will mirror the inventory objective as opposed to an enforcement and removal program; to be refined by your clarifying responses to these important issues. If these areas of inquiry are not easily addressed, then perhaps reconsideration of a twelve-month extension of the filing deadline would have merit. In looking at the potential revenue losses, both short and long term, if otherwise legitimate moorings were to be disallowed, it seems more than reasonable to urge the Agency to do everything in its power to ensure that 'good faith' in the spirit of cooperation be the guiding principle for all activities/actions the months and years ahead. So many environmental protections are tied to these permits, their loss would represent much more than a lost mooring, it would, in an overarching sense, be a lost opportunity to enhance a number of thresholds and their respective indicators. Thank you, as always, for your time, effort, expertise, and understanding.

All the best,

*John*

John Falk