MINUTE ITEM
This Calendar Item No. C18
was approved as Minute Item
No. 18 by the State Lands
Commission by a vote of 3
0 at its 1/8/92
meeting.

CALENDAR ITEM

A 7

S 1

C 18

01/08/92
PRC 3887
Pelkofer

AUTHORIZE LITIGATION TO REMOVE
FENCES FROM STATE LAND

LESSEE:
Lake Tahoe Park Association
John Wright, President
P. O. Box 5771
Tahoe City, California 95730

AREA, TYPE LAND AND LOCATION:
1.628 acres of land located in Lake Tahoe near Sunnyside, Placer County.

LAND USE:
Maintenance of two existing piers, a swim line and swim area, and 45 existing mooring buoys, respectively, utilized for noncommercial, multiple-use, recreational boating and swimming.

STATUTORY AND OTHER REFERENCES:
A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.

B. Cal. Code Regs.: Title 3, Div. 3; Title 14, Div. 6.

AB 884:
N/A

OTHER PERTINENT INFORMATION:
1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

   Authority: P.R.C. 21065 and 14 Cal. Code Regs. 15378.

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2. To fulfill the Commission's obligation to protect the public trust and to increase public access to the shorezone at Lake Tahoe, staff has conducted periodic reviews of the shore area to identify obstructions to lateral public access. As a result of a review conducted this past summer, a number of fences which block lateral access were discovered. High and low water lines were determined at each location and a photo taken to record the trespass (see Exhibit "B" attached). Owners were then identified, contacted, and requested to remove the fences to the high water line.

While there was some reluctance, most owners have complied. The Lake Tahoe Park Association refused, at first, to take any action, but then advised staff that they had "removed them (the fences) back to our own property". Subsequent investigation disclosed that they had indeed removed some fence, approximately to the low water line (their property line). Because of the low water level, it is possible now to step around the end of the fence and enter the area on the beach in front of their property (see Exhibit "F" attached). The fences, however, still exist across the trust easement and still present a physical and psychological barrier to the use of the beach area. Additionally, they have installed a new fence on each side of their pier. It effectively blocks passage along the beach (Exhibit "F"). Correspondence with their president, John G. Wright, discloses that, not only are they unwilling to comply with our request for removal of the obstructions, but are misleading staff as to compliance. It is staff's firm belief that compliance will not be obtained unless legal action is taken. Staff therefore requests authorization to initiate litigation to compel compliance.

EXHIBITS:

A. Letter of July 3, 1991 requesting removal
B. Photos of fences in June 1991
C. Letter of August 4, 1991 from John G. Wright
D. Letter of August 13, 1991 again requesting removal
E. Letter of October 3, 1991 advising fence removed
F. Photos of fences in October 1991
G. Letter of October 21, 1991 again requesting removal

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IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.

2. AUTHORIZE STAFF COUNSEL AND/OR THE ATTORNEY GENERAL TO TAKE ALL NECESSARY ACTION, INCLUDING LITIGATION TO OBTAIN COMPLIANCE AND REMOVAL OF THE FENCES WHICH CONSTITUTE AN OBSTRUCTION TO THE PUBLIC ACCESS AT THE LAKE TAHOE PARK ASSOCIATION AND FOR COSTS AND ATTORNEYS FEES AND SUCH OTHER RELIEF AS MAY BE APPROPRIATE.

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STATE OF CALIFORNIA
STATE LANDS COMMISSION
1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 323 8487

PETE WILSON, Governor

July 3, 1991

File Ref: PRC 3887

Lake Tahoe Park Association
C/O Richard J. Wilson, Trustee
P.O. Box 5771
Tahoe City, CA 95730

Dear Mr. Wilson:

The State Lands Commission has recently conducted a survey of fences in the Tahoe area which appear to encroach upon the Public Trust Easement, which exists between Lake elevations 6228.75 (high) and 6223.00 (low), and in some cases below low on the State's sovereign lands.

The fences on each side of your property (parcel no.83-100-03) encroach upon the State's trust easement and on state property. They constitute a trespass and prevent public access to the shoreline.

This is to advise you that they must be removed from the easement and from state property. Fencing may remain above the high water line. If the fences are not removed within 30 days of this letter the State will take appropriate action, including legal action if necessary to remove them.

Should you have any question concerning this demand or what is necessary to comply, please call or write me at the phone number or address shown in the letterhead. We would appreciate your cooperation in this matter.

Sincerely

Peter Pelkofer

Peter Pelkofer
Senior Counsel

cc: Robert Lynch

EXHIBIT A

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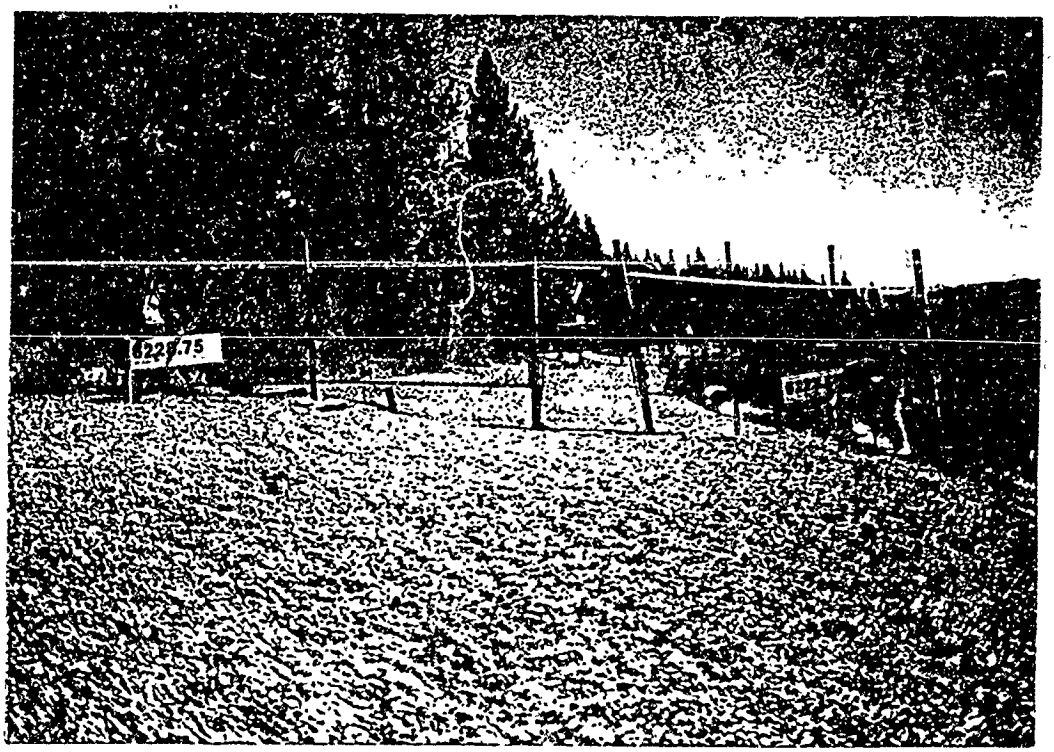

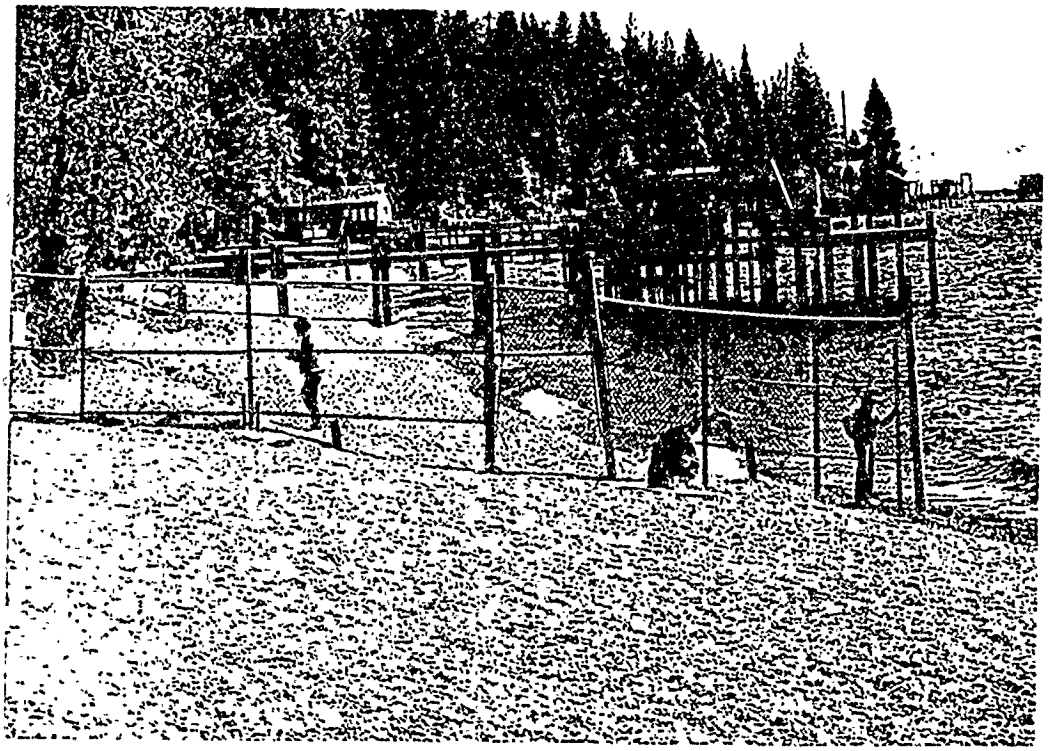

EXHIBIT B

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TAHOE PARK ASSOCIATION

Lake Tahoe Park Association

A NON-PROFIT CORPORATION ACTING AS TRUSTEE FOR THE PROPERTY OWNERS OF LAKE TAHOE PARK

P.O. BOX 5771 • TAHOE CITY, CA 95730 • 916 583-3820

August 4, 1991

Mr. Peter Pelkofer
State Lands Commission
1807 13th Street
Sacramento, CA 95814
Re: fences on our beach: your file ref. PRC 3887

Dear Mr. Pelkofer,

This is in response to your July 3 letter.

The Association is composed of some 750 families and dates from the early 1930's. Over the years we have built facilities (picnic tables, bathrooms, horseshoe pits, and play structures) for the use of our families and their renters and guests.

Our fences, which have been there for at least thirty years, are absolutely necessary to protect our property: Just to the South (see enclosed map) is a Public Beach (Wm. Kent) and right across the road is a public campground. Groups of rowdies (see attached Tahoe World article) come up for vacation, buy beer at one of the two stores right between the two parks or at Sunnyside Bar right next door, and wander down to the beach looking for fun.

Needless to say, our facilities would be tempting targets, especially after dark, when our watch person goes home, if it were not for the fence. We would have no quarrel with Sierra Club hikers passing through, but what we are dealing with here is a mind set that says "We are a long way from home and we can do anything we want to!"

To deny us the ability to protect our property would impose a heavy financial burden on our Association:

the cost of additional staff to guard against trespassers
vandalism costs
insurance costs of greater damage and liability exposure
greater dog damage and control costs
enforcement problems as non-members find it easy to sneak in

Most of our members are low- to middle-income (many retired) who cannot afford to pay a big jump in assessments you would be forcing on us. Who will pay these costs?

EXHIBIT C

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On investigating the situation, I found that these fences were put in long before there was any differentiation between our property (to the usual low water line) and what is now regarded as State-owned land (the Lake), and that one does go too far. We will be moving it back to our property line as soon as practicable.

Gerald Gordon of your agency gave me a sheet (attached) that recognizes the appropriateness of protection in our special circumstances. I am assuming that TRPA is the governing agency and am starting the permitting process with them.

Sincerely,

John G. Wright

John G. Wright, President,
Lake Tahoe Park Association

JGW/st
cc: Rich Wilson, Manager
Greg Gibeson

EXHIBIT C (2)

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STATE OF CALIFORNIA
STATE LANDS COMMISSION
1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 323-8487

PETE WILSON, Governor

August 13, 1991

File Ref.: PRC 3887

John G. Wright, President
Lake Tahoe Park Association
P.O. Box 5771
Tahoe City , CA 95730

Dear Mr. Wright:

Thank you for your thoughtful response to my July 3rd letter. During our survey of fences at Lake Tahoe I had an opportunity to see Tahoe Park and I agree it is a very nice recreational facility. Clearly you would want to protect it from rowdies and beer drinkers wandering the beach. We do not question the need to secure your property. What we do question is the method, which restricts access to the public trust easement, that area between the high and low water marks.

It was obvious, when I inspected the fences that there had been some recent add-ons. Not only do they extend below the high water mark, they extend below the low water mark on to state sovereign land.

I believe you are misreading the sheet from TRPA. They are only one of Tahoe's permitting agencies. The area on which your fences trespass is under the jurisdiction of the State Lands Commission. Please note the sheet makes reference to the prohibition of fences from the high water mark lakeward and excepts only fences for protection of health and safety of the public or to protect property located adjacent to areas of public access. This does not mean that you can restrict public access to the easement, it means you can fence your property above the high water mark, including a fence along the high water line if necessary to secure your property from the beach.

Please consider removal of the trespassing fences to make legal action unnecessary. We will work with you on alternate security proposals.

Sincerely,

Peter Pelkofer

Peter Pelkofer
Senior Counsel

cc: Robert Lynch

EXHIBIT D

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TAHOE PARK ASSOCIATION

Lake Tahoe Park Association

A NON-PROFIT CORPORATION ACTING AS TRUSTEE FOR THE PROPERTY OWNERS OF LAKE TAHOE PARK

P.O. BOX 5771 • TAHOE CITY, CA 95730 • 916 583-3820

Mr. Peter Pelkofer
State Lands Commission
1807 13th Street
Sacramento, CA 95814

October 3, 1991

Re: fences on our beach: your file ref. PRC 3887

Dear Mr. Pelkofer,

This is in response to your August 13 letter.

We appreciate your coming up to Tahoe to see our facilities and our problem.

As I mentioned in my July letter, we were aware that our fence additions, made years ago before there was a TRPA or Supreme Court decisions, did in fact extend pretty far out. And, in response to your request and without prejudice to our position we have a right to protect our private property, we have removed them back to our own property. With the present low water level, public access is unimpeded ---we have already had a $700.00 dingy stolen.

Needless to say, your suggestion of a fence along the high water line parallel to the shore would complicate our access and security problems, increase our operating costs, and reduce the attractiveness of home ownership in the Association. Our Manager, Rich Wilson, who owns the primary real estate operation in the area, affirms that Association membership increases the value of property considerably. (For example, there are known examples of people buying unbuildable lots for the sole purpose of becoming eligible for Association membership.) Thus, we can clearly quantify the reduction of value impact on the 800 or so property owners that would be affected.

With this in mind, we are struggling to come up with alternative security proposals. We would welcome your suggestions.

Sincerely,

John G. Wright, President
Lake Tahoe Park Association

JGW/st
cc: Rich Wilson, Manager
Greg Gibeson
Norm Tuttle and Gideon Kanner; Crosby Heafey Roach & May
Jan Brisco; Tahoe Lakefront Owners Association
Lake Tahoe Park Association Board
Ed Connor; Pacific Legal Foundation

EXHIBIT E

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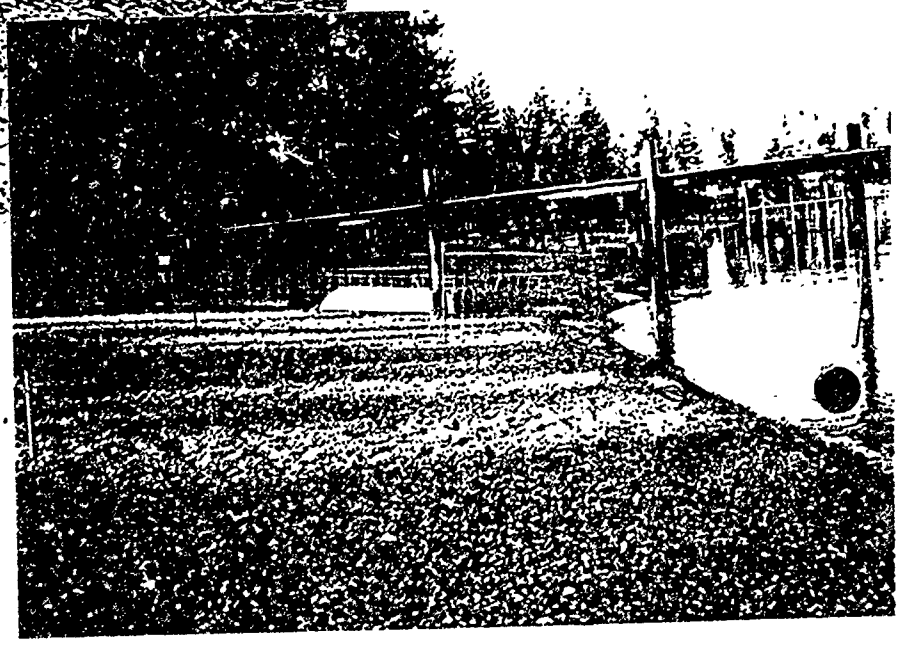
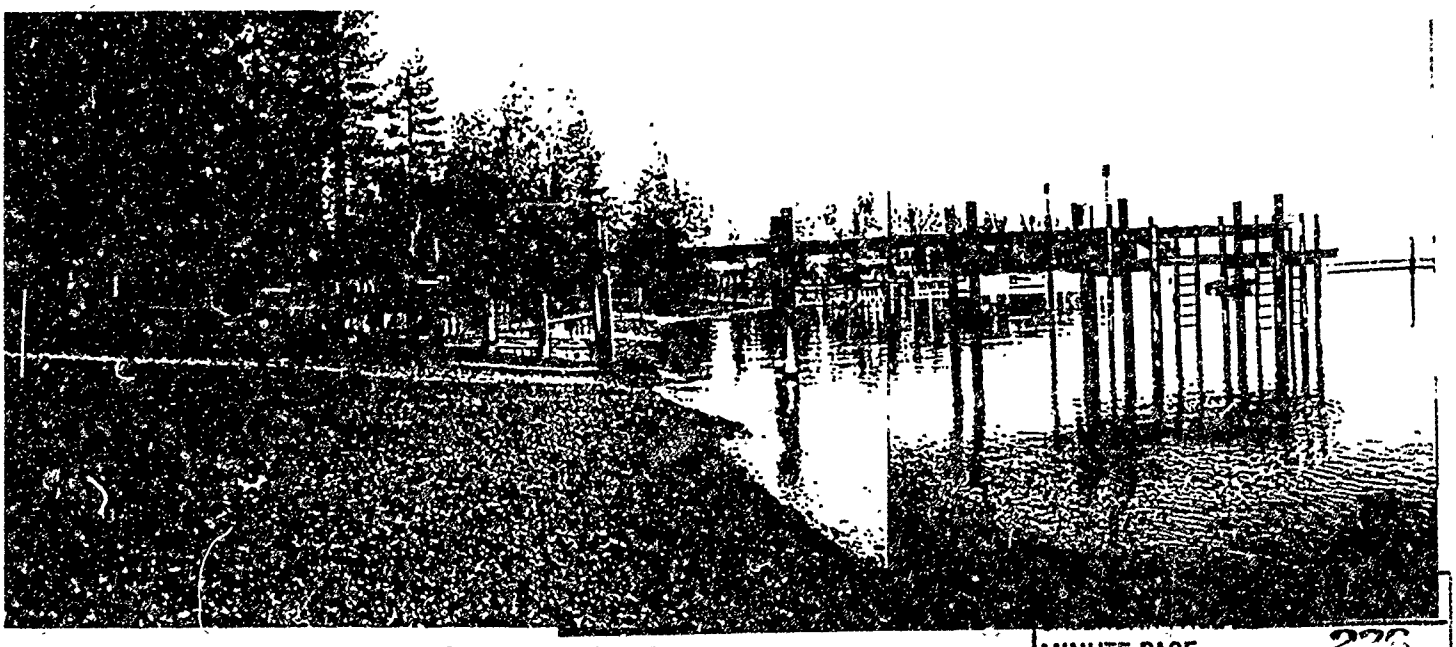


Most southerly pier

(Note: small fence around pier)



Most northerly pier - Northerly property line fence can be seen in the background

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EXHIBIT F

STATE OF CALIFORNIA
STATE LANDS COMMISSION
1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 323-8487

PETE WILSON, Governor

October 21, 1991

File Ref.: P.R.C. 3887

John G. Wright, President
Lake Tahoe Park Association
P.O. Box 5771
Tahoe City, CA 95730

Dear Mr. Wright:

I delayed answering your letter of October 3, 1991, because my information about the removal of the fence at your facility did not reconcile with what you expressed in your letter and I wished to verify what action you had taken.

Apparently you have decided that rather than cooperating by removal of the fence as was requested you would seek a confrontation by removal of only a small portion of the fence along the property line and by the addition of a fence along the pier.

So that there is no misunderstanding of what is required, I will reiterate. The fences at the property lines must be removed to a point above the high water line, and the new fence at the pier must conform as well. No signs which in any way indicate that the beach area is private property are permitted. If such signs are used they must clearly indicate it is the property above high water to which access is prohibited.

I am this date requesting an authorization from my Commission to institute suit to have the fences removed and for costs and damages. I am also asking the Commission to authorize any action necessary to revoke the permit which your Association holds for piers, buoys, etc.

Sincerely,

Peter Pelkofer

Peter Pelkofer
Senior Counsel

cc Robert Lynch
Gerald Gordon

EXHIBIT G

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