

**CALENDAR ITEM
39**

A	4	04/09/09
		WP 8667
S	1	J. Frey
		B. Terry

**CONSIDER DENIAL OF AN APPLICATION FOR A RECREATIONAL PIER LEASE
AND AUTHORIZATION FOR LITIGATION FOR TRESPASS AND EJECTMENT**

APPLICANTS AND PARTIES:

Evelyn H. Richmond, Trustee of the ENR II QPRT Trust U/A/D 3/26/03; Ronald M. Naess and Ann J. Naess, Trustees of the Ronald M. Naess and Ann J. Naess Revocable Trust Dated January 15, 1999; Randall C. Naess and Susan E. Naess, Trustees of the Randall and Susan Naess Trust Dated November 30, 1998; Chris L. Stevens and Kristin N. Stevens, Trustees of the Chris and Kristin Stevens Trust Dated June 13, 2007; Jeffrey R. Naess and Adriane Naess, Trustees of the Jeff and Adriane Naess Trust Dated January 5, 1995; David L. Richmond; Robert E. Richmond and Karen L. Richmond, Trustees of the RKR Trust, Dated June 29, 2000; and I. Elizabeth Richmond, Trustee of the Robert L. Richmond Exemption Trust of August 11, 2004

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in Lake Tahoe, adjacent to 4812 and 4826 North Lake Tahoe Boulevard, near Carnelian Bay, Placer County.

BACKGROUND INFORMATION:

The existing pier was originally constructed in 1961 by the upland property owner at the time, Burnell Richmond. In 1969, Mr. Richmond applied to the U. S. Army Corps of Engineers (Corps) for an after-the-fact permit for the existing pier. However, because the Tahoe Regional Planning Agency (TRPA) was just recently formed when the application was submitted to the Corps, the Corps withheld issuing a permit for the pier and other existing facilities in Lake Tahoe until coordination with the TRPA took place.

Later, in 1969, staff of the California State Lands Commission (Commission) became aware of the existing pier located on sovereign lands adjacent to 4812 North Lake Boulevard. On July 2, 1969, staff sent a letter to the upland property owner, Burnell Richmond, notifying him that the pier was located on sovereign lands and that a lease from the Commission was required. Mr. Richmond

CALENDAR ITEM NO. 39 (CONT'D)

submitted a lease application in January 1970, and a lease was sent to him for execution. Over the next several years there were numerous correspondences between the Commission staff and Mr. Richmond involving the terms of the proposed lease. Before July 1978, the lease had not been executed by Mr. Richmond ostensibly because of the proposed assessment of rent by the Commission and a claim by Placer County to the lands fronting the Richmond property and the Commission's request of a waiver by the County for placement of the pier. In July 1978 these two issues were resolved. Still Mr. Richmond did not return a signed lease.

On August 1, 2002, Commission staff contacted the then upland property owner(s) regarding the unauthorized pier and advised of the need for a lease. On June 16, 2003, a lease application was submitted by Jeffrey Richmond Naess, et al., (Applicants) for a pier with a boatlift, a boathouse with two boatlifts and four mooring buoys (collectively facilities). A Recreational Pier Lease form for the facilities was sent to the Applicants for execution on August 12, 2003. The lease form was returned to the Commission on November 20, 2003, unsigned and with significant modifications to its terms and conditions proposed by Applicants attorney. The Applicants requested modifications to the standard lease covenants concerning insurance, repair and maintenance, restoration of the lease premises, assignments, and default and remedies. Commission staff and the Applicants were unable to resolve these differences and negotiations stalled.

On May 15, 2007, Commission staff reinstated negotiations and was informed by the Applicant's attorney that the Applicants' position had not changed from that in 2003. Applicants and their attorney were also informed in 2008 that the sundeck on top of the boathouse would not be recommended for approval. An updated lease form was submitted to the Applicant's attorney including the standard lease covenants and requiring the removal of the sundeck railing and staircase to restore the top of the boathouse for use only as a boathouse. In addition, Applicants were also informed that the four buoys would not be recommended for approval because the lease application lacked verification as to when the buoys were placed and lacked permits from the U.S. Army Corp of Engineers and the TRPA. More discussions were held between the Applicants attorney and Commission staff. Some minor issues were resolved, but there was no agreement on the core issues outlined above, between the parties.

Based on the above, staff recommends that the application submitted by the Applicants, which includes the sundeck, railing and staircase be denied and that Commission staff and the Office of the Attorney General be authorized to take whatever steps are necessary to remove the Applicants' facilities located

CALENDAR ITEM NO. 39 (CONT'D)

waterward of the low water elevation 6,223 feet Lake Tahoe Datum from the bed of Lake Tahoe.

OTHER PERTINENT INFORMATION:

1. The Applicants are natural persons who own the upland property at 4812 and 4826 North Lake Boulevard, which are contiguous lakefront properties.
2. For clarification, the existing facilities are located on two adjacent properties. Facilities that are located waterward of elevation 6,223 feet Lake Tahoe Datum adjacent to 4812 North Lake Boulevard include a portion of the pier with a boatlift, a boathouse with two boatlifts, a sundeck with railing and stairs, and two mooring buoys; two additional buoys are located adjacent to 4826 North Lake Boulevard.
3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060 (c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AUTHORIZATION:

1. AUTHORIZE DENIAL OF THE APPLICATION FOR A RECREATIONAL PIER LEASE SUBMITTED ON JUNE 13, 2003.
2. RATIFY STAFF'S FINDING THAT EVELYN H. RICHMOND

CALENDAR ITEM NO. 39 (CONT'D)

TRUST, ET AL., IS IN TRESPASS ON STATE-OWNED SOVEREIGN LAND LOCATED IN LAKE TAHOE, ADJACENT TO ASSESSORS PARCEL NOS. 115-060-013 AND 115-060-012, PLACER COUNTY, AS SHOWN ON THE ATTACHED EXHIBIT A.

3. AUTHORIZE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO EJECT EVELYN H. RICHMOND TRUST, ET AL., TO REMOVE ALL IMPROVEMENTS FROM STATE SOVEREIGN LANDS IN LAKE TAHOE, ADJACENT TO ASSESSOR'S PARCEL NOS. 115-060-013 AND 115-060-012, PLACER COUNTY; TO RESTORE THE SOVEREIGN LANDS AT THIS LOCATION TO ITS CONDITION PRIOR TO PLACEMENT OF THE IMPROVEMENTS TO THE SATISFACTION OF THE COMMISSION; AND TO RECOVER THE COMMISSION'S DAMAGES AND COSTS.