

**CALENDAR ITEM
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J. Frey
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**CONSIDER INFORMATION IN RESPONSE TO THE COMMISSION'S ACTION ON
AGENDA ITEM #39 AT THE APRIL 9, 2009 COMMISSION MEETING**

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.

INFORMATION:

At the April 9, 2009 Commission meeting, staff presented an item regarding a pier and boathouse with a sundeck, stairs and railing that is located on State sovereign lands in Lake Tahoe without the benefit of a lease from the Commission. There was lengthy discussion as to whether or not any other agency had previously approved the pier and boathouse with the sundeck, railing and stairs.

Following presentation of the staff report and testimony by staff and the Applicants' attorney, the Commission offered to allow the Applicants the opportunity to sign the lease submitted by the staff (which included a provision for removal of the deck railing and stairs) and also indicated that if the Applicant could present satisfactory documentation that the sundeck and related staircase

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and railings were in fact previously permitted they would take that into consideration. The Commission then adopted the staff recommendation which included the denial of the application for a Recreational Pier Lease that included a sundeck with railing and stairs, ratified the staff's determination that the Applicants' structures were in trespass on State-owned sovereign lands and authorized the staff of the Commission and Office of the Attorney General to take all steps necessary, including litigation, to eject the improvements from the unleased state sovereign lands by a vote of 3-0.

On May 7, 2009, information was provided on behalf of the Applicants, which is attached as Exhibit B and by reference made a part hereof. Based on staff's review of the information, it remains staff's position that no evidence can be found that permits were ever issued for the construction of the pier, sundeck, railing and stairs. The information provided does indicate that in 1984 the Tahoe Regional Planning Agency (TRPA) issued an *over-the-counter* Qualified Exempt Permit for the replacement of one pier pile.

In 1986, the Corps of Engineers (Corps) sent a letter indicating that the Applicant would qualify for the Nationwide Permit for the repair, rehabilitation, or replacement of any **previously authorized**, currently serviceable structure, **provided the work would not deviate from the plans of the original structure**. (Emphasis added) Again, staff could find no evidence that any prior permits were issued for the pier that would qualify it for the nationwide permit. In 1999, TRPA staff approved the replacement of a boatlift as a Qualified Exempt activity.

Through staff's review of the various photographs and drawings in the file, along with materials received from the Corps and TRPA through Freedom of Information Act requests, staff has been unable to locate any building permits or Corps permits for the original structure. The upland owners assert that the pier was constructed between 1958 and 1961. In 1970, a letter of permission from Placer County was provided that allowed the Applicants to maintain the pier on lands the County claimed ownership of at the time. This letter of permission was the sole County authorization. There is also no TRPA permit for the original structure because TRPA was not in existence at that time.

What is apparent is that beginning in 1969 the staff of the Commission sought to have the upland owner apply for and have the Commission consider authorizing the use of the state's property by the upland owners for a pier.

In addition to not obtaining a permit for the construction of the pier, it is apparent that the upland owners have modified the pier and sundeck over the years and

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that the size of the improvements has increased **without** the benefit of any permits.

The drawing attached to the 1970 Corps Notice and to the application submitted to the Commission in 1970 shows an unenclosed boat house with a sundeck, single pipe railing and stairs. The drawing also indicates that the pier in 1970 was 177' in length (measured from 6,229' Lake Tahoe Datum) and seven feet wide, while the boathouse/sundeck was 30.3' in length and 17' wide. The drawing submitted and approved by TRPA in 1987 for a repair to the pier indicates that the pier is basically the same size configuration and size as the 1970 drawing. Both drawings depict a catwalk on the right hand side of the pier (looking from the upland property towards the Lake).

Copies of photographs that were submitted on behalf of the Applicants to the Corps in 1986 confirm that the boathouse was not enclosed, the railing on the sundeck was a single pipe style, and that no catwalk was constructed in front of or on the left hand side of the boathouse (the term used at Lake Tahoe for what was more appropriately at that point a "covered berth").

A drawing submitted on behalf of the Applicants to the Commission with their 2002 application indicates that the boathouse/sundeck was then 32' long and 22' wide and shows that an approximately 34.3' long catwalk was placed in front of and on the left hand side of the boathouse. Photos taken within the last several months show an enclosed (on three sides) boathouse with a catwalk in front of and on the left side of the boathouse, a modified staircase to the roof of the boathouse, and wood posts, railings and benches on the top. The pier also now has a wave deflecting skirt on its south side.

Drawings approved in 1987 by TRPA show six pilings in the water supporting the covered boathouse. The recent photographs show approximately 25 pilings at the boathouse. Staff can find no evidence, and the Applicants have provided none, that permits were issued by any entity for the current configuration and additions to the boathouse and sundeck. . Based upon the additional information obtained, staff does not recommend that the Commission modify its action of April 9, 2009 by Agenda Item #39.

OTHER PERTINENT INFORMATION:

1. 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.

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

EXHIBITS:

- A. Site and Location Map
- B. Information Provided on Behalf of Applicant's

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. CONSIDER ADDITIONAL INFORMATION PROVIDED BY THE APPLICANT AND STAFF IN RESPONSE TO THE COMMISSION'S ACTION ON AGENDA ITEM #39 AT THE APRIL 9, 2009 COMMISSION MEETING.
2. DIRECT STAFF TO TAKE ANY AND ALL ACTION APPROVED BY THE COMMISSION.