

CALENDAR ITEM

MINUTE ITEM
This Calendar Item No. C11
was approved as Minute Item
No. 11 by the State Lands
Commission by a vote of 3
to 0 at its 9/23/92
meeting.

C 1 1

A 7

S 1

09/23/92
PRC 3905
J. Ludlow

CONSIDER APPROVAL OF AMENDMENT TO
GENERAL PERMIT - RECREATIONAL USE
PRC 3905

APPLICANT:

Holland and Mercurio, a Nevada
general partnership
1325 Airmotive Way, #175
Reno, Nevada 89502

AREA, TYPE LAND AND LOCATION:

A 0.117-acre parcel of submerged land located in Lake Tahoe
at Tahoe Pines, Placer County.

LAND USE:

Existing multi-use pier and two mooring buoys.

TERMS OF EXISTING LEASE:

Initial period:

Ten (10) years beginning July 25, 1985.

Public liability insurance:

Combined single limit coverage of \$500,000.

CONSIDERATION:

\$709.44 per annum, with the State reserving the right to fix
a different rental on each fifth anniversary of the lease.

BASIS FOR CONSIDERATION:

Pursuant to 2 Cal. Code Regs. 2003.

APPLICANT STATUS:

Applicant is owner of upland.

CALENDAR ITEM NO. C 1 1 (CONT'D)

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.
2. This amendment authorizes George A. Montgomery as an additional lessee.
3. On July 25, 1985, the Commission authorized the issuance of a General Permit - Recreational Use (Minute Item No. C07) to Holland & Mercurio (H&M), a Nevada general partnership, James Balsdon and George Montgomery, for the reconstruction of an existing pier and maintenance of six mooring buoys. Messrs, Balsdon and Montgomery own improved lots on each side of the Holland & Mercurio lot from which the pier extends. Following a dispute over the ownership and rights to the pier, lawsuits were filed on behalf of Balsdon and Montgomery.
4. On February 27, 1986, Calendar Item 15, the Commission rescinded the prior approval and issued the permit to Holland and Mercurio which authorized the pier and two buoys.

The permit provided for an amendment by the State Lands Commission to include as co-permittee either or both of the immediately adjacent littoral property owners upon the establishment of ownership, use, or other rights in the pier, either by the final judgment of a court of competent jurisdiction or by agreement with Holland and

CALENDAR ITEM NO. C 1 1 (CONT'D)

Mercurio. Mr. Montgomery subsequently obtained a permit from the Commission authorizing his two buoys under PRC 6925. Mr. Balsdon, et al, also received a permit for two buoys under PRC 6958.

5. Following the trial of Mr. Montgomery against Holland and Mercurio in Placer County Superior Court, and subsequent judgment, Mr. Montgomery was declared to be one-third owner of the subject pier.
6. Mr. Balsdon, et al settled his lawsuit against Holland and Mercurio and quitclaimed any and all interest in the pier to the defendants, thus giving H&M a two-thirds interest in the pier.
7. All other terms and conditions of the permit remain in full force and effect.

APPROVALS OBTAINED:

All approvals previously obtained.

EXHIBITS:

- A. Land Description
- B. Location Map
- C. Placer County Superior Court Judgement

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 THE AMENDMENT OF LEASE PRC 3905, ISSUED TO HOLLAND AND MERCURIO, A NEVADA GENERAL PARTNERSHIP, TO INCLUDE GEORGE A. MONTGOMERY AS AN ADDITIONAL PERMITTEE, EFFECTIVE FEBRUARY 24, 1992, AND OTHERWISE AS SET FORTH HEREIN, FOR THE CONTINUED USE AND MAINTENANCE OF ONE MULTI-USE PIER AND TWO MOORING BUOYS ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.
3. FIND THAT ALL OTHER TERMS AND CONDITIONS OF THE PERMIT REMAIN IN FULL FORCE AND EFFECT.

CALENDAR ITEM NO. 011 (CONT'D)

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 THE AMENDMENT OF LEASE PRC 3905, ISSUED TO HOLLAND AND MERCURIO, A NEVADA GENERAL PARTNERSHIP, TO INCLUDE GEORGE A. MONTGOMERY AS AN ADDITIONAL PERMITTEE, EFFECTIVE FEBRUARY 24, 1992, AND OTHERWISE AS SET FORTH HEREIN, FOR THE CONTINUED USE AND MAINTENANCE OF ONE MULTI-USE PIER AND TWO MOORING BUOYS ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.
3. FIND THAT ALL OTHER TERMS AND CONDITIONS OF THE PERMIT REMAIN IN FULL FORCE AND EFFECT.

EXHIBIT "A"

PRC 3905

LAND DESCRIPTION

Three parcels of submerged land in the bed of Lake Tahoe, Placer County, California, said parcels being described as follows:

PARCEL 1 - Pier

All that land lying immediately beneath a pier TOGETHER WITH the necessary use area extending 10 feet from the extremities of said pier, said pier being adjacent to and easterly of Lot 4A, Block 2, as shown on the map entitled "Resubdivision of a part of Tahoe Pines" filed for record in Book "D" of Maps, Page 37, Placer County Records.

EXCEPTING THEREFROM any portion lying landward of the ordinary low water mark of Lake Tahoe.

PARCELS 2 & 3 - Buoys

Two circular parcels of submerged land, each 40 feet in diameter, situated adjacent to and easterly of the abovementioned Parcel 1.

END OF DESCRIPTION

REVIEWED JULY, 1992 BY LLB.

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MINUTE PAGE	<u>2806</u>

L a k e

T a h o e

● Buoy

● Buoy

125'

.08

Ladder

11'

30'

182'

----- Approx. OLWM

CONCRETE BULKHEAD

6'

APN 085 - 202 - 05

Tallac Ave.

APN 085 - 222 - 01

EXHIBIT "A"
Site Map
PRC 3905
APN 085 - 222 - 01
Lake Tahoe
PLACER COUNTY



CALENDAR PAGE 194
MINUTE PAGE 2807

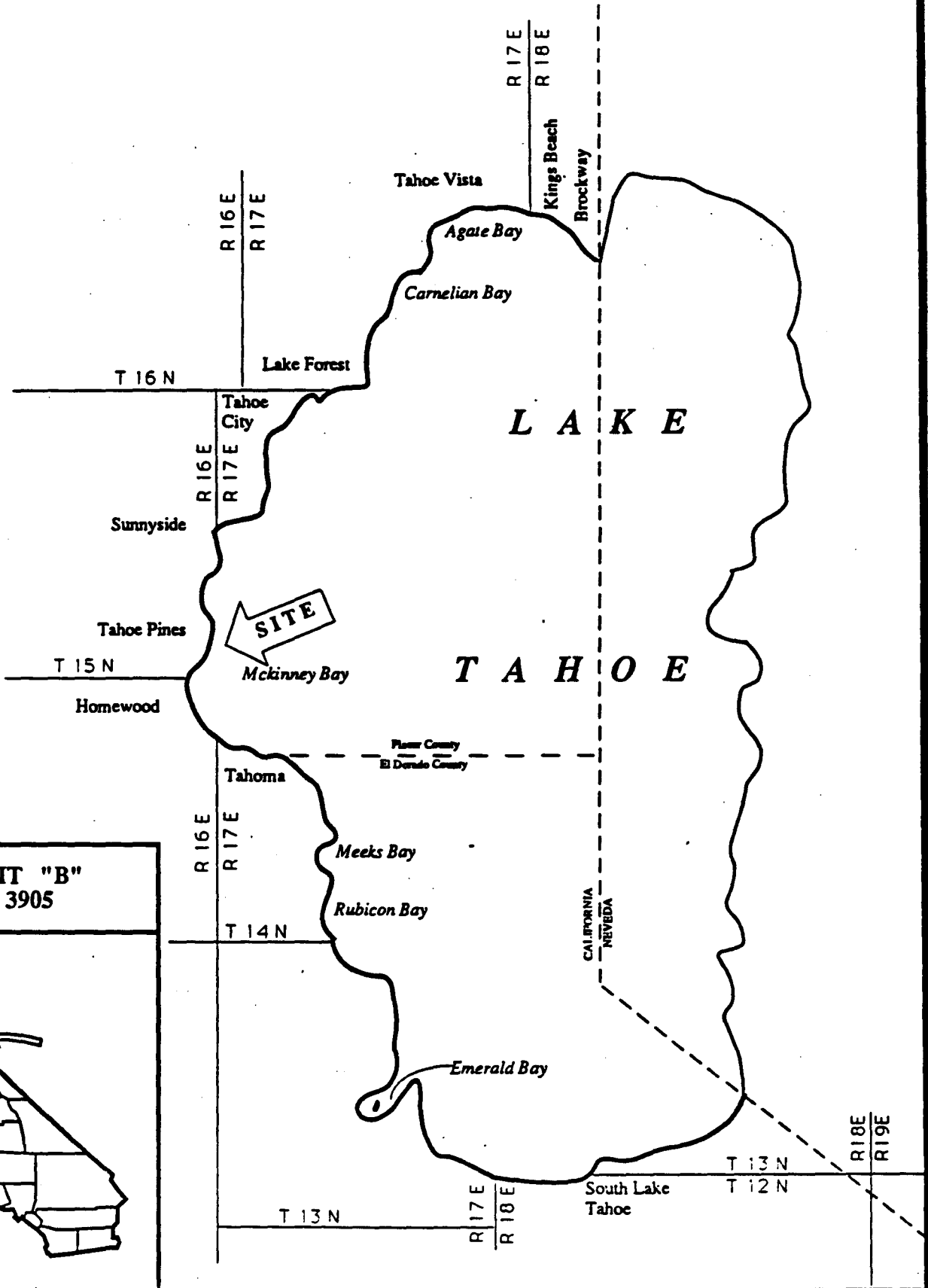


EXHIBIT "B"
PRC 3905



FILED

FEB 24 1992

CARL DePIETRO
CLERK OF THE SUPERIOR COURT
DEPUTY

1 BRUCE KAMINSKI, ESQ.
California State Bar No. 109333.
2 RADER, RADER, GOULART & GRAY 2:13
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Sacramento, California 95816
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5 Attorneys for Plaintiffs GEORGE A.
MONTGOMERY and NANCY T. MONTGOMERY
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF PLACER

10
11 GEORGE A. MONTGOMERY, et al.,)
Plaintiffs,)
12)
13 vs.)

Case No. 75699,
Consolidated with
No. 82458

14 HOLLAND AND MERCURIO,
a Nevada partnership, et al.,)
15 Defendants.)
16

JUDGMENT

17 AND RELATED CROSS-ACTION AND
18 CONSOLIDATED ACTION.

19 This cause came on regularly for trial on July 23, 1991, in
20 Department 1 of the above-entitled court, the Honorable J.
21 Richard Couzens, Judge, presiding, sitting with a jury (which was
22 empaneled to decide plaintiffs' legal causes of action only).
23 Plaintiffs GEORGE and NANCY MONTGOMERY appeared by their attorney
24 Bruce Kaminski. Defendants HOLLAND AND MERCURIO, a Nevada
25 general partnership, and ROBERT C. HOLLAND appeared by their
26 attorney O. R. Rouse. Defendant THOMAS MERCURIO appeared by his
27 attorneys Marvin L. Rudnick and Michael Partos. Defendants JAMES
28 BALSDON, VIRGINIA BALSDON, HOWARD BALSDON and LINDA STARR WEST

1 (collectively "BALSDON") appeared by their attorney Dean Headley.
2 Oral and documentary evidence was presented by all parties. The
3 cause was argued and submitted for decision. The transcript of
4 the court's tentative decision formed the statement of decision.

5 NOW, THEREFORE, IT IS ADJUDGED, ORDERED, AND DECREED that:

6 1. As of September 15, 1970, plaintiffs GEORGE and NANCY
7 MONTGOMERY were, and are currently, the owners in an undivided
8 one-third (1/3) interest as tenants in common of the title in fee
9 simple in and to the pier located lakeward from the property
10 described as:

11 LOT 4A, of Block 2 of "RESUBDIVISION OF A
12 PART OF TAHOE PINES", as shown on the map
13 thereof, filed in Book "D" of Maps, Page 37,
14 Placer County Records. (APN: 085-222-01),

15 and which pier is shown in Book 8 of Surveys, Page 73, Placer
16 County Records, together with any repaired or replacement pier
17 at that location.

18 To the extent that defendant HOLLAND AND MERCURIO claim fee
19 ownership of that portion of Lakeside Park lying lakeward from
20 the above-described real property (upon which the pier abuts),
21 plaintiffs GEORGE and NANCY MONTGOMERY shall have an easement for
22 pedestrian access to the pier from plaintiffs' property to the
23 pier in precisely the same dimensions as stated in the document
24 entitled "Easement Deed," recorded on September 12, 1983, in
25 Volume 2621, Page 34, Placer County Records.

26 The MONTGOMERYS' interest in the pier and easement, as
27 stated herein, is appurtenant and incidental to, and is
28 transferrable with, their property located at 3795 Belleview
Avenue, Tahoe Pines, also described as Lot 1. Block 1 of the

1 "RESUBDIVISION OF A PART OF TAHOE PINES," as shown on the map
2 thereof, filed in Book "D" of Maps, Page 37, Placer County
3 Records (APN: 085-202-05).

4 2. Plaintiffs shall reimburse defendant HOLLAND AND
5 MERCURIO for one-third (1/3) of defendant's cost of construction,
6 engineering fees and permits in replacing the pier in the summer
7 of 1985, together with lease payments from July 1985 to the
8 present, except for the cost of construction and engineering and
9 permitting for the boat lift currently existing on the subject
10 pier. Defendant HOLLAND AND MERCURIO shall submit to plaintiffs
11 a statement under oath itemizing its expenses of design and
12 construction of the basic pier under this paragraph. The amount
13 to be reimbursed hereunder may be offset against plaintiffs'
14 costs of suit pursuant to paragraph 5 below.

15 3. The California State Lands Commission, Tahoe Regional
16 Planning Agency, United States Army Corps of Engineers and any
17 other affected government agency with jurisdiction over the
18 subject pier are hereby directed to include plaintiffs as co-
19 permittees on any permit for the pier issued by said government
20 agency in accordance with plaintiffs' one-third (1/3) ownership
21 interest in the pier.

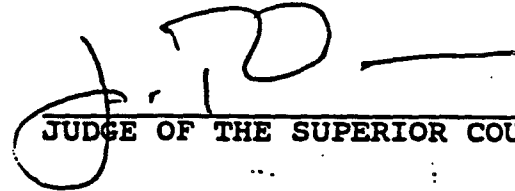
22 4. Plaintiffs shall not recover any monetary damages nor
23 injunctive relief under their complaint herein, except as set
24 forth herein.

25 5. Plaintiffs shall have and recover their costs of suit
26 against defendant HOLLAND AND MERCURIO only, pursuant to a
27 memorandum of costs to be filed by plaintiffs. All defendants
28

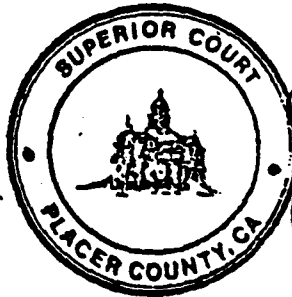
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shall bear their own costs of suit.

Dated: FEBRUARY 24, 1992

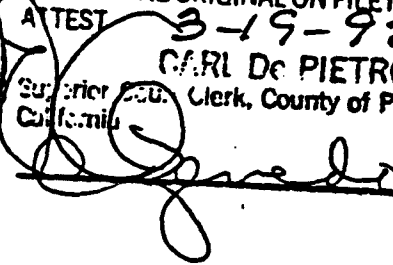


JUDGE OF THE SUPERIOR COURT



THE FOREGOING INSTRUMENT IS A CORRECT
COPY OF THE ORIGINAL ON FILE IN THIS OFFICE
ATTEST

3-19-92
CARL De PIETRO
Superior Court, Clerk, County of Placer, State of
California



Deputy Clerk