

MINUTE ITEM

This Calendar Item No. C75 was approved as Minute Item No. 75 by the California State Lands Commission by a vote of 3 to 0 at its 5/12/97 meeting.

CALENDAR ITEM

C75

A 4
S 1

05/12/97
W503.1691
J. Frey
M. Crow

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE LITIGATION OF PEOPLE OF THE STATE OF CALIFORNIA, ET AL. V. EL DORADO IMPROVEMENT CORPORATION ET AL.

BACKGROUND:

This case arose out of an illegal dredging of a boat channel at the foot of Ski Run Boulevard, South Lake Tahoe in 1987 and 1988. At that time the water level at Lake Tahoe was declining and this presented docking difficulties for large watercraft.

Commencing in 1986, El Dorado Improvement Corporation (EDIC) was the Commission's lessee of the lands involved in the dredging. EDIC had entered into a sublease with Lake Tahoe Cruises, Inc. (LTC) for the operation of the tour boat, Tahoe Queen, from its marina. Because of the low water levels, LTC contracted with Tom Ragan to dredge a new and deeper channel to the Marina. Dredge spoils were side cast into the lake forming various ponds and berms. Pollutants long buried in the lake bottom were disturbed and re-suspended. While LTC obtained some of the necessary permits, it failed to obtain a permit from the Corps of Engineers and a dredging lease from the Commission.

After unsuccessful negotiations for cleanup of the dredge spoils and re-contouring of the lake bottom, the Commission sued EDIC, LTC and Tom Ragan for the illegal dredging and pollution of the lake bed. Cross complaints for indemnification were filed by EDIC against LTC. A settlement agreement was reached between LTC and the Commission and liens were placed on the Tahoe Queen by the Commission to assure compliance.

EDIC filed for bankruptcy in 1991. It has few assets and many creditors. Transco, its insurance carrier, has denied the Commission's claim and has only acknowledged that it has a good faith duty to defend its insured.

The operator of the Tahoe Queen, Joseph Thiemann, has died and his heirs together with EDIC and Transco now each want to resolve the remaining issues.

CALENDAR PAGE	374
MINUTE PAGE	000869

CALENDAR ITEM NO. C75 (CONT'D)

THE PROPOSED SETTLEMENT AGREEMENT:

Recently, a proposed settlement agreement involving EDIC, LTC, Thomas Ragan and the Commission was negotiated. This new settlement agreement modifies the one previously entered into between the Commission and LTC and resolves all of the causes of action in the litigation involving the Commission with LTC, EDIC and Thomas Ragan.

In the original settlement agreement, LTC agreed to clean up and re-contour the lake bed and an inner harbor at the marina. LTC also agreed to pay the Commission \$200,000 of which \$150,000 was to be waived upon occurrence of the clean up. The remaining \$50,000 was considered a penalty to be paid in two equal installments. LTC further promised to pay the Commission its staff costs for monitoring of the cleanup. The Commission placed liens against the boats owned by LTC to secure payment of the settlement monies. In addition to the 1994 settlement with the Commission, LTC settled a separate action under the Federal Clean Water Act brought by the United States Attorney General's Office by agreeing to pay a \$50,000 fine to the United States.

In 1996 LTC paid the Commission \$25,000, cleaned up the inner marina at a cost of approximately \$60,000, but failed to clean up the lake bed because of the high water conditions. Staff monitoring costs were \$8,100. Under the terms of the proposed modification of the settlement agreement, LTC will be given credit for the sums paid for the cleanup and the penalty (\$85,000). LTC will pay the balance of \$115,000 due for the remainder of the cleanup and penalty and \$8,100 due for staff monitoring costs no later than July 31, 1997.

LTC has also agreed to pay another \$15,000 to help resolve the litigation against EDIC in which it is the subject of a cross complaint for indemnity. This payment will also be made by July 31, 1997. Further LTC has agreed to not seek refund of a \$5,000 deposit made in conjunction with the 1988 dredging and now held by the Tahoe Regional Planning Agency. In the interests of settling the case, EDIC and Transco have offered to pay the State \$25,000. These funds will be paid to the Office of the Attorney General for litigation costs and expert fees.

In consideration of this, the Commission will dismiss with prejudice and release EDIC and its insurance carrier from any future claims arising out of this dredging event. However, the Commission has reserved its rights as an additional named insured under Transco Insurance Policies Nos. 54178, 04875, and 54409 in the event a third party sues the State for damages arising out of this dredging event.

CALENDAR ITEM NO. C75 (CONT'D)

Because lake levels have risen dramatically, there is doubt over whether Phases 1 and 2 of the original settlement cleanup plan can be performed in the foreseeable future. Discussions with other agencies reveal that there is considerable evidence that cleanup under wet conditions will cause more environmental harm than good by resuspending organic deposits and that a wet cleanup is not feasible under present conditions. However, under the revised agreement, settlement remediation funds could be used for an alternative mitigation project elsewhere at Lake Tahoe if the original remediation project cannot be accomplished.

The settlement agreement contains a stipulation that Thomas Ragan will not engage in dredging activities below the ordinary high water line at Lake Tahoe without first notifying the Commission of his intention to do so and obtaining Commission authorization. The Commission will dismiss with prejudice and release Mr. Ragan from any future claims arising out of this dredging event.

Staff believes that this new settlement agreement between all of the parties to the litigation is in the best interests of the State and represents a good faith compromise between the parties.

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: Public Resources Code Section 21065 and 14 Cal. Code Regs. 15378.

PERMIT STREAMLINING ACT DEADLINE:

N/A.

EXHIBIT

- A. Site Map

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CALENDAR ITEM NO. C75 (CONT'D)

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 150611 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND 14 CAL. CODE REGS. 15378.
2. APPROVE AND AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE SETTLEMENT AGREEMENT.
3. AUTHORIZE THE COMMISSION STAFF AND THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY TO IMPLEMENT THE SETTLEMENT AGREEMENT.

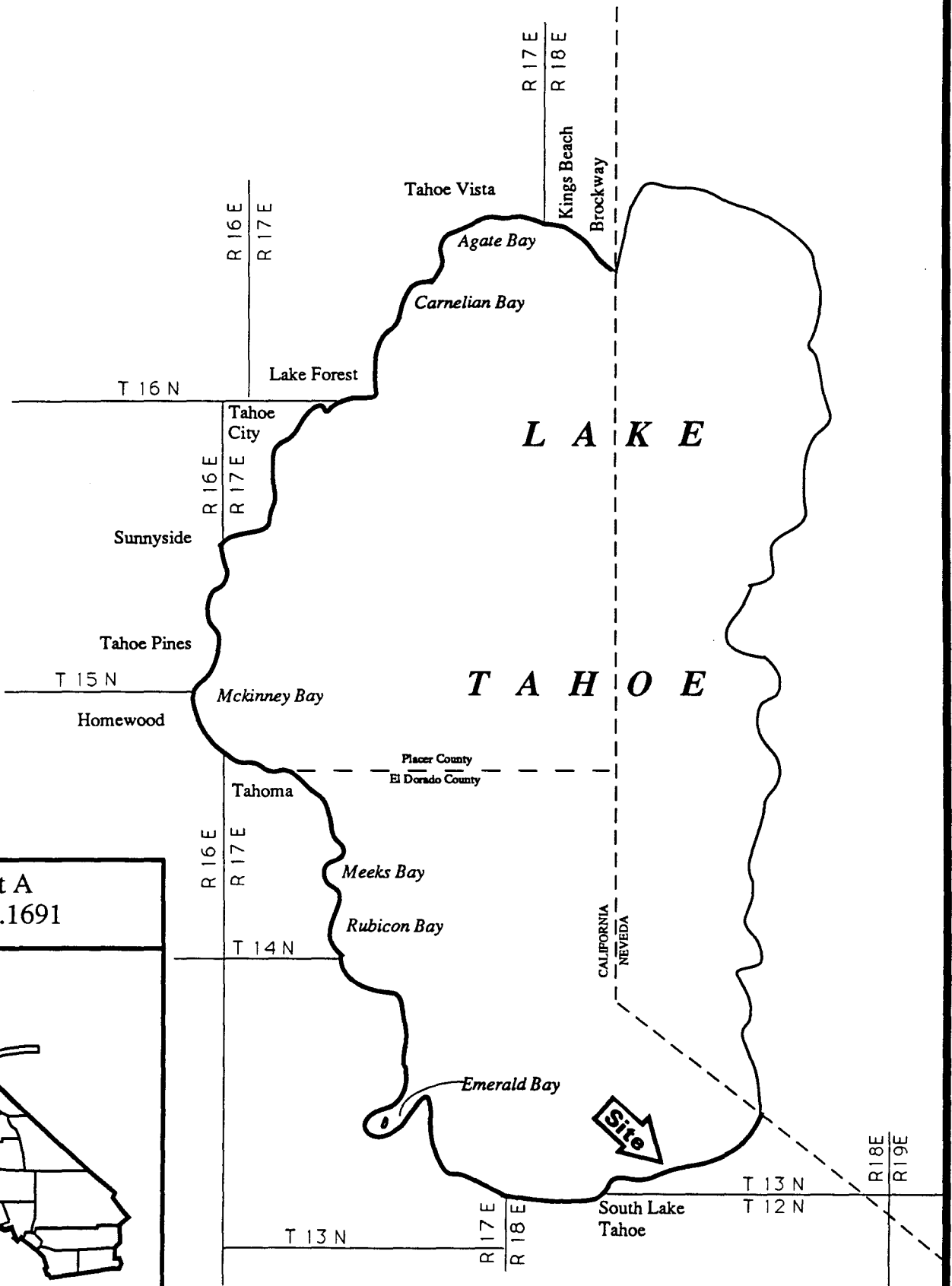


Exhibit A
W 503.1691

