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STATE OF NEVADA

NEVADA DIVISION OF STATE LANDS

BEFORE ELLERY STAHLER, HEARING OFFICER

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IN RE:

The Larsen/Parker Pier Extension Application

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

TUESDAY, OCTOBER 6, 2020

CARSON CITY, NEVADA

REPORTED BY:

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TUESDAY, OCTOBER 6, 2020, 10:00 A.M.

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HEARING OFFICER STAHLER: Good morning. Today is Tuesday, October 6th, 2020, at 10:00 a.m. The Nevada Division of State Lands public hearing is now called to order.

Pursuant to NAC 322.180, this public hearing is to collect information and solicit comments on the proposed project to use state land to tear down, rebuild, and extend the multiple-use pier located lakeward of 1006, 1008 Skyland Drive, APN's 131803210024 and 131803210023.

Pursuant to Governor Sisolak's Emergency Directive 006 and as extended by Emergency Directive 21, Section 37, there is no physical location for this hearing. This hearing is being conducted virtually and is available via the Lifesize application and via telephone conference at the addresses included on the public hearing agenda published on NDSL's website, lands dot NV dot gov.

My name is Ellery Stahler and I am the deputy administrator of the Nevada Division of State Lands and this hearing's hearing officer. Here with me today are Charlie Donohue, administrator and state land registrar, Nevada Division of State Lands, Tori Sundheim, deputy attorney general, State of Nevada Attorney General's Office. Division

1 of State Lands staff, including Scott Carey, state lands
2 planner, Meredith Gosejohan, Tahoe program manager, Grahame
3 Ross, IT and GIS supervisor, and Sherri Barker, land agent.

4 At this time I would like to invite those in
5 attendance to introduce themselves. We'll start with those
6 on Lifesize and then move on to those on the phone. For
7 those of you who are on Lifesize, please unmute yourself and
8 state your name for the record, and please spell your last
9 name.

10 Mr. Magrath, I see you on Lifesize. Why don't we
11 start with you.

12 MR. MAGRATH: Thank you. My name is Bill
13 Magrath. I'm hoping you can hear me. I'm an attorney in
14 Reno with McDonald Carano. I'm here on behalf of Tim and
15 Jennifer Bumb, who are the trustees of the Bumb Trust. Thank
16 you.

17 HEARING OFFICER STAHLER: Okay. Thank you for
18 your introduction.

19 Mr. Midkiff. Gary, it looks like you're still on
20 mute. If you could unmute yourself. This is Gary Midkiff.
21 I'm representing the Larsen and Parker properties in the
22 project.

23 Gary, we know that you're going to be a presenter
24 later during this hearing, but we're hearing significant

1 feedback. If you're sharing a room with somebody else, could
2 you have them please mute their device or their computer
3 while you're speaking, to help us limit the feedback. Gary,
4 can you try speaking again?

5 MR. MIDKIFF: Yes.

6 HEARING OFFICER STAHLER: Nope. We're still
7 hearing feedback. Gary, I don't know if you're able to log
8 in using a different device. But we'll come back to you.

9 Mr. Hall, would you please introduce yourself.

10 MR. HALL: Thomas J. Hall, Reno, Nevada attorney
11 representing Timothy and Jennifer Bumb, trustees of the Bumb
12 Trust, objecting to the application, working with Bill
13 Magrath.

14 HEARING OFFICER STAHLER: Thank you. It looks
15 like we have the Larsens on the line as well. Can you please
16 introduce yourselves.

17 MR. LARSEN: Yes. Kendall and Kathleen Larsen
18 here at 1006 Skyland Drive.

19 HEARING OFFICER STAHLER: Thank you.

20 Mr. MacSween.

21 MR. MACSWEEN: John MacSween at 1004 Skyland
22 Drive, south adjoining property to the applicants.

23 HEARING OFFICER STAHLER: Thank you. I see that
24 we have a Loren Vaccarezza, if I'm saying that last name

1 correctly. Can you please introduce yourself. You may be on
2 mute.

3 MR. ROSS: Not muted.

4 HEARING OFFICER STAHLER: Oh, it's not muted?
5 Okay.

6 MR. MAGRATH: This is Bill Magrath.
7 Mr. Vaccarezza is a son-in-law of Mr. Timothy Bumb and is
8 simply observing the hearing today. I hope that answers your
9 question.

10 HEARING OFFICER STAHLER: It does. Thank you.
11 Mr. McGuffin.

12 MR. ROSS: He's unmuted.

13 HEARING OFFICER STAHLER: Try again,
14 Mr. McGuffin.

15 MR. MCGUFFIN: This is Rich McGuffin. I'm here
16 on behalf of Kendall and Kathleen Larsen and Rick Parker, the
17 applicants.

18 HEARING OFFICER STAHLER: Thank you. And we also
19 have somebody joining us on the phone. Can you please unmute
20 yourself and state your name.

21 MR. PARKER: Richard Parker, 1008 Skyland.

22 HEARING OFFICER STAHLER: Thank you, Mr. Parker.
23 Has everybody who has participated had an opportunity to
24 introduce themselves? If not, please unmute yourself.

1 MR. MIDKIFF: This is Gary Midkiff.

2 MS. SUNDHEIM: I think it's because he and
3 Mr. McGuffin are in the same room.

4 MR. MIDKIFF: My device says muted.

5 MR. ROSS: So I think we're picking him up from
6 McGuffin's computer.

7 HEARING OFFICER STAHLER: Gary, are you in the
8 same room as Mr. McGuffin?

9 MR. MIDKIFF: Yes.

10 HEARING OFFICER STAHLER: Okay. Mr. McGuffin, if
11 you could please mute your device, so maybe we can hear Gary.
12 We're getting a lot of feedback.

13 MR. ROSS: Have Gary unmute.

14 HEARING OFFICER STAHLER: No. Gary, I don't know
15 if it's possible to join from another location, but we are
16 getting feedback from you, or if you could swap locations
17 with Mr. McGuffin. We did not hear feedback from his device.

18 MR. ROSS: Rich McGuffin, he's muted on his side.

19 MR. MIDKIFF: Okay. I have turned my device off.
20 This is Gary Midkiff. I'm representing the Larsen and Parker
21 Pier Project today for purposes of this hearing.

22 HEARING OFFICER STAHLER: Thank you, Gary. We
23 can hear you a lot better now. I appreciate that. All
24 right. Thank you for working with us through those technical

1 challenges and thank you for your introduction.

2 MR. ROSS: We're going to mute everybody right
3 now.

4 HEARING OFFICER STAHLER: And we will have you on
5 mute until we're ready.

6 MR. MAGRATH: Excuse me. Can I make one comment?
7 This is Bill Magrath. I just wanted to confirm for the
8 record that the Bumb Trust hearing record has become part of
9 the record. We created that so we could bate stamp or bate
10 number every page of the NDSL records. And we did that
11 solely for the purpose of referring to specific pages to
12 assist the ultimate decision in this matter. And I believe
13 it's been uploaded to the FTP site and is part of the record.
14 And I just wanted to confirm that. Thank you. I'll mute
15 myself now.

16 HEARING OFFICER STAHLER: Okay. Thank you,
17 Mr. Magrath. We did receive that. It is not the
18 administrative record. But it is -- We have accepted it as a
19 written comment. And we do have copies of it here in this
20 hearing room. So you are free to refer to it, should you
21 need to. Okay. Thank you.

22 Because this hearing is being conducted
23 virtually, it's important for me to explain how it will be
24 conducted and the process for taking public comment. Our

1 agenda today includes an opportunity for public comment at
2 the beginning of the hearing, followed by a presentation by
3 the applicant, followed by a second public comment period.
4 NDSL will hear public comment during the applicable agenda
5 items only and not during the applicant's presentation.

6 The Division is making an audio and visual
7 recording of these proceedings. Accordingly, please mute
8 your device at all times except when you have been called to
9 provide public comment or to present.

10 The process for taking public comment will be as
11 follows: First I will invite individuals who have indicated
12 their interest in making public comment on the virtual
13 sign-in sheet. I will call you individually by name. After
14 I call on those listed on the virtual sign-in sheet, I will
15 next invite individuals who have raised their hand on
16 Lifesize. This is a virtual hand raise that will allow me to
17 see who else attending the hearing is interested in making
18 public comment.

19 Finally, for those who do not have internet
20 access, I will next invite individuals who are participating
21 by phone by calling out your name. Once your name is called,
22 please unmute yourself and state your name for the record.
23 You will have up to five minutes to provide your public
24 comment. Group representatives will have up to 15 minutes to

1 make public comment. If you are a representative of a group
2 and would like to speak for 15 minutes, please identify
3 yourself as such and I will grant you additional time. If
4 you are not prepared when called upon for public comment,
5 that's okay. We can come back to you.

6 As a reminder, today's public hearing is an
7 administrative hearing. During public comment, I would ask
8 you please to direct your comments to me only and not to any
9 other participants.

10 There will be no question and answer period
11 between the applicant and members of the public. And
12 additional time will not be given to respond to a
13 previously-made public comment. If you elect to make public
14 comment during both public comment agenda items, we ask you
15 please not to repeat yourself.

16 Please know that in addition to the oral comments
17 heard today, NDSL will also continue to accept written public
18 comment via e-mail to Sherri Barker, S Barker at lands dot NV
19 dot gov, and by regular mail, 901 South Stewart Street, Suite
20 5003, Carson City, Nevada, 89701. The deadline to receive
21 written comments is 5:00 o'clock p.m. on Friday, October 9th,
22 2020.

23 Information on how to submit written public
24 comment is also available on the public hearing agenda.

1 Finally, a transcript of the public hearing is
2 being prepared by a certified court reporter. If you desire
3 a copy, please contact NDSL, and we will furnish you a copy
4 at your expense.

5 With that, we're ready to open Agenda Item Number
6 2, public comment. I'll start with those listed on the
7 virtual sign-in sheet. And, as a reminder, please mute your
8 device at all times except when called upon.

9 So we'll first start with John MacSween.
10 Mr. MacSween, if you could please unmute your device. And
11 you have five minutes to provide public comment.

12 UNIDENTIFIED SPEAKER: He's muted.

13 MR. MACSWEEN: Can you hear me?

14 HEARING OFFICER STAHLER: I can hear you.

15 MR. MACSWEEN: Can you hear me now?

16 HEARING OFFICER STAHLER: Yes.

17 MR. MACSWEEN: Okay. I was going to wait until
18 the end after the presentations to make my comment.

19 HEARING OFFICER STAHLER: Okay. That's okay.
20 We'll come back to you.

21 Mr. Magrath, would you like to make public
22 comment at this time?

23 MR. MAGRATH: Mr. Hall and I had agreed Mr. Hall
24 would go first, if you prefer that, or I can make my

1 comments. However you would like.

2 HEARING OFFICER STAHLER: It doesn't matter to
3 us. If Mr. Hall would like to go first, that's okay.

4 MR. HALL: Yes, I'll go first.

5 MR. ROSS: He muted himself.

6 HEARING OFFICER STAHLER: Mr. Hall, I believe
7 you're still on mute.

8 MR. HALL: Okay. How about now?

9 HEARING OFFICER STAHLER: We can hear you.

10 MR. HALL: Okay. Thomas J. Hall for the record
11 representing Jennifer and Timothy Bumb, trustees of the Bumb
12 Trust.

13 The first question before the hearing officer
14 today is what is the littoral parcel of land that's mandated
15 by statute and code to support the pier application. As you
16 know, under NRS 321.595, the boundary between the bed of Lake
17 Tahoe and by the State of Nevada in its sovereign capacity in
18 adjacent lands owned by others or by the state in any other
19 capacity is established as a line whose elevation is 6223
20 Lake Tahoe Datum and that is normally known as the low water
21 mark. NRS 322.0052 describes the littoral or riparian
22 residential parcel as a littoral or riparian residential
23 parcel means a parcel of land which adjoins the bed of an
24 applicable body of water. And, of course, that is the bed of

1 Lake Tahoe at 6223 Lake Tahoe Datum. NAC 322.210 talks about
2 the eligibility requirements specific to Lake Tahoe and
3 states, except as otherwise provided, only a person who is
4 the owner of a littoral parcel may apply for a permit for a
5 pier, breakwater, mooring buoy, water intake line, or other
6 structure. So it's critical in your determination to
7 determine who is the littoral property owner. And the policy
8 of this is very clear because the state lands will not allow
9 or permit anyone who is not a littoral owner to build a
10 structure over someone else's property.

11 In Lincoln Park, which is adjacent by a mile or
12 so to this property, there was a circumstance where a pier
13 was built by the Milligan family out in to Lake Tahoe. Upon
14 litigation, it was determined that Douglas County owned the
15 fee title to the littoral parcel, and that has created
16 problems that we don't want to repeat here.

17 So the policy of the land, the Division, is to
18 find out who owns the littoral parcel. The application
19 signed by Richard H. Parker, Junior says that he owns the
20 parcel of land APN 131803210002. And that is defined on the
21 assessor map for Douglas County as being identical to the
22 subdivision map for lot 35, block A. The chain of title that
23 has been submitted, appearing record 091, provides only title
24 to lot 35 that's platted by the map and no other parcel

1 lakeward of the lakeside boundary of lot 35. There's been no
2 deed, no decree, no indication of evidence of title for the
3 Parker parcel of anything beyond west of the property line of
4 lot 35.

5 If there's one document I would like the
6 administrator to look at, that would be document HR 61. If
7 you might turn to HR 61. And this is a depiction of parcel
8 of land in Skyland number one, unit one, block A, lot two.
9 And it shows a result of the litigation that had been
10 commenced to actually extend the west property line lakeward
11 from the subdivision lot boundary of lot two, lot A that was
12 filed May 8th of 2010 -- 20 -- 2018. I'm sorry.

13 And it shows the result of a quiet title suit
14 where the upland owner wanted to extend to the low water mark
15 and therefore before -- and thereby become littoral. There's
16 no such document in the record that is presented to the
17 Division that shows any extension of the lakeside boundary of
18 lot 35 to the low water mark.

19 The suit was brought and served and filed as a
20 judgment of the Court. Therefore, it's our opinion that
21 there's no evidence that the Parker lot 35 is littoral,
22 because there's no evidence presented, there's no deed, no
23 decree of title, no policy of title insurance, nothing other
24 than the bare assertion. The legal description of the lot

1 makes specific reference to the subdivision map. And that's
2 during --

3 HEARING OFFICER STAHLER: Mr. Hall, I'm sorry to
4 interrupt, but you are over your five minutes. Are you on
5 your concluding remarks? I can give you 30 seconds to
6 conclude.

7 MR. HALL: Okay. Wow, five minutes goes awful
8 fast.

9 HEARING OFFICER STAHLER: It sure does.

10 MR. HALL: Okay. Just the last point is HR 248,
11 the legal description that is in the chain of title makes
12 specific reference to the Skyland subdivision of map number
13 one. There's no evidence that there's been any actual
14 eviction of title beyond the western boundary of lot 35.
15 Therefore, Parker's parcel is not littoral.

16 HEARING OFFICER STAHLER: Okay. Thank you,
17 Mr. Hall, for your comment.

18 Do we have anybody else on Lifesize who would
19 like to provide public comment? Mr. Magrath, you have five
20 minutes. Please state your name for the record.

21 MR. MAGRATH: Thank you. For the record, my name
22 is Bill Magrath. I'm here on behalf of Tim and Jennifer
23 Bumb. For 60 years since their predecessors gathered
24 together to create the common plan, scheme, and enterprise

1 and jointly constructed this breakwater in front of Skyland
2 lots 34 to 37, the lot owners have enjoyed the benefits of
3 that breakwater and the protected lagoon. All four lot
4 owners shared in that lagoon equitably. Now, two of the four
5 owners over the strenuous objection of the other two owners
6 asked this state agency for approval of the land grab inside
7 the lagoon and seek state sanction of their efforts to
8 monopolize the deep water of this lagoon for their personal
9 benefit. It's in complete disregard of the rights of the
10 adjacent neighbors.

11 Mr. Hall has explained how under the Nevada
12 Administrative Code Mr. Parker does not own a lot adjacent to
13 the boundary of this bed of Lake Tahoe. I'm going to discuss
14 the factors in Nevada Administrative Code Section 332.190,
15 which the administrator asked us to discuss in this hearing.

16 We incorporate all of the objections that we
17 stated. We put it down on paper. I urge the administrator
18 and the deputy attorney general reviewing this matter to read
19 all of those objections and read the responses from
20 Mr. McGuffin. And I ask you to visit the site. It's a
21 simple drive up the hill. It's a beautiful drive up the
22 hill. Stand on that beach and look at that breakwater.
23 You'll see how small that lagoon is and you'll understand the
24 impact of a pier.

1 In 1960, the parties agreed together to build
2 that lagoon. They forever changed their access to the lake.
3 Mrs. Olson and Mr. MacSween on either end of that lagoon lost
4 their direct access to the lake and paid for the construction
5 of the breakwater to assist them. Since then, all the
6 improvements inside the lagoon have been done with the
7 unanimous consent of all property owners, including the
8 construction of a sun deck, which now the applicants claim to
9 be a pier. Take a look at NRS 332.043, the definition of a
10 deck. This is a deck, not a pier.

11 And even Mr. Dave Wilson from the Nevada Division
12 of State Lands on February 2, 2001, in page 512 of the
13 hearing record, said, this concrete platform was performed by
14 DSL as a pier based on TRPA's database and without a field
15 inspection. He says it was designed as a sun deck and never
16 used as a pier.

17 If you look at the photograph, there is no
18 tackle, there's no mooring tackle. There is no photograph of
19 a boat moored to this pier. This pier actually has -- This
20 deck actually has a rock at the end. Look at the end of the
21 rock in the photograph and you'll -- end of the deck, you'll
22 see there's a rock beyond it. If it was a pier, the pier
23 would have extended past the deck.

24 Unfortunately, the state, in 1995, granted

1 Mr. Willis a pier permit after his application, which is in
2 the record, at Exhibit Number 27, only sought a permit for a
3 boat house, a concrete pad, and a buoy. I have covered this
4 in our brief.

5 Let me cover the NAC requirements. First, an
6 administrator must look at the location and density of
7 existing piers. You cannot ignore the fact that this pier is
8 being sought inside a breakwater covered by the parties.
9 They intend to monopolize the breakwater -- I mean deep
10 water. How can Mr. MacSween or Mr. Bumb ever put a pier in
11 this, inside this breakwater? The answer is they're being
12 closed out by this pier.

13 Next, you must look at the potential interference
14 with navigability. This is the fatal flaw. If you look at
15 the US Army Corps of Engineers records, there is no pier
16 permit for this pier that they claim to be. It's a sun deck.

17 The other fatal flaw comes from the Nevada
18 Division of Wildlife. That entity at Exhibit 24 in the Bumb
19 record clearly shows that Ms. Barker asked for comment on the
20 shorter appended pier and the Nevada Division of Wildlife
21 came out and said we will still need to deny the request
22 based on navigational hazard as originally stated in 2000.

23 The next requirement is the conformance with
24 applicable requirements of law.

1 I'm getting close to the end here, if I could
2 have 30 more seconds.

3 There's no -- If you look at the US Army Corps of
4 Engineers NWP general conditions, it states that no activity
5 my cause more than a minimal adverse effect on navigation.
6 This proposed pier will have a massive adverse effect.

7 And, finally, you need to look at the impacts on
8 adjacent property owners and the private benefit versus the
9 public benefit. The administrator asked for an appraisal
10 done by the Johnson Perkins firm. And each pier is going to
11 add a million dollars to the property owner, the upland
12 property owner. And I respectfully suggest that when you add
13 a million dollars, you are going to diminish the property
14 next door, Mr. MacSween and Mr. Bumb.

15 And the way to solve this is for the
16 administrator to simply deny the pier application under NAC
17 322.190. And in doing so you will maintain the status quo.
18 There are no winners. There's no losers.

19 HEARING OFFICER STAHLER: Mr. Magrath.

20 MR. MAGRATH: Nobody gets a pier. Nobody gets
21 what they want. Thank you.

22 HEARING OFFICER STAHLER: Okay. Thank you for
23 your comment, Mr. Magrath. I would like to invite any others
24 participating by Lifesize, if you would like to make public

1 comment, please indicate by unmuting yourself and letting me
2 know.

3 Okay. I'm seeing no others by Lifesize who are
4 interested in participating. We'll move to those who are
5 participating by phone. If you would like to make public
6 comment, please unmute your phone, and state your name for
7 the record.

8 I'm hearing no public comment requests by the
9 phone. I will make one last call for public comments. If
10 you use the hand raise feature on Lifesize, that will help
11 us. Okay. Seeing none.

12 In addition to the public comments we just heard,
13 the Division of State Lands requested public comments be sent
14 by e-mail and mail on the public hearing agenda. As of the
15 deadline of 1:00 o'clock p.m. on October 5th, 2020, the
16 Division of State Lands received one e-mailed comment. And
17 that is from Steve and Lawna Hardy. And it reads,
18 Ms. Barker, my wife and I live at 73 Skyland Court, two doors
19 from the Parkers. And we have a view of the proposed pier.
20 We see absolutely no reason why they should be denied a
21 permit. So we support the Larser -- Sorry -- we support the
22 Larsen Parker Pier Rebuild located at 1006 and 1008 Skyland
23 Drive, Zephyr Cove, Nevada, and see no adverse effects to
24 this proposal. The public comments that we received prior to

1 the meeting will be posted on the Division of State Lands
2 website. I will now close Agenda Item 2, public comment. I
3 appreciate your comments.

4 Agenda Item Number 3 is the application for a
5 Larsen and Parker Pier Rebuild and Extension for possible
6 action. I believe Gary Midkiff and Richard McGuffin will
7 present on behalf of the applicant. So when you're ready,
8 please unmute yourselves, state your name for the record, and
9 then please proceed. You will have up to 20 minutes for your
10 presentation. And I may ask you follow-up questions after
11 you conclude your presentation.

12 And I would just like to remind members of the
13 public to please hold your comments during this portion of
14 the hearing. We will have another agenda item for public
15 comment following this.

16 Go ahead, Mr. Midkiff.

17 MR. MIDKIFF: Hello.

18 HEARING OFFICER STAHLER: Hi, Gary. We can hear
19 you. Oh, I guess he's muted now.

20 MR. ROSS: I have unmuted Rich McGuffin.

21 MR. DONOHUE: That's where he is.

22 MR. MIDKIFF: Hello.

23 HEARING OFFICER STAHLER: Mr. Midkiff, we can
24 hear you. You may proceed.

1 MR. MIDKIFF: Okay. Thank you. This is Gary
2 Midkiff, M-i-d-k-i-f-f. We're representing the Larsen and
3 Parker Pier Project, proposing the multiple-use pier
4 rebuilding an extension. And Scott Carey is going to help me
5 by pointing out the areas on the photos as I proceed. Scott,
6 please move to the next slide.

7 This aerial photo is taken about two weeks ago
8 because I was asked by State Lands to provide a current shot
9 of what is existing in the area within the breakwater. If
10 you look at the south end of the area, there was a pier right
11 in that breakwater there. That's Mr. MacSween's existing
12 pier.

13 As you go north, there's a first buoy that is
14 there. And you'll notice the swing arc of each of the buoys
15 as I go north. The second one is right there. It's a Larsen
16 existing permitted mooring buoy. And to the north of that is
17 the Parker mooring buoy. And you notice another mooring buoy
18 that's within the mark of the Parker buoy, that's the
19 MacSween buoy which is permitted to north in front of the
20 MacSween parcel. It was -- I'm sorry. The Bumb parcel. It
21 was permitted temporarily to be in this location years ago
22 during drought and it never moved back to its permitted
23 location.

24 If you go south again to the property line

1 between MacSween and Larsen, you'll see two parcels there.
2 Those are two existing permitted covered -- Excuse me -- boat
3 lifts in the northern of the two lakeward of Larsen will be
4 removed as part of this permit.

5 And then to the north is the existing on the
6 Larsen Parker property line existing here, which by TRPA
7 definition is a pier because it extends at least ten feet
8 lakeward of the high water line. And that's why it has been
9 permitted in that location.

10 The next slide please. The circle shows the
11 existing concrete pier that was -- has been permitted for,
12 oh, about 25 years by Nevada State Lands as a multiple-use
13 pier between the Larsen and Parker parcels.

14 Next slide. This and the next two slides show
15 the concrete structure that will be removed and replaced.
16 The two lakeward of the boulders under that will be relocated
17 outside the breakwater to add to a fish habitat in that area.

18 The landward rock is in the next slide. You can
19 see how it is actually -- I'm sorry. The next one. In this
20 slide you can see that boulder is actually poured in to these
21 steps and retaining wall. And that one will be -- will still
22 be in that location because it would damage the structure for
23 the pier and breakwater that a new pier will anchor to.

24 Next slide. This shows the existing location of

1 the overall area within the breakwater. If you look in the
2 middle of that, you can see two mooring buoys lined up more
3 or less behind each other. Those are the Parker and Larsen
4 buoys. The one to the left is the Bumb buoy. The one to the
5 left, yeah. That needs to be moved back in front of the Bumb
6 property.

7 The next slide. This slide shows the closed pier
8 and it also shows the removed covered boat lift on the Larsen
9 parcel.

10 One thing you'll note if we go back to the last
11 slide, the new pier is 37 feet short of the outward buoy
12 there, which is the Larsen buoy.

13 And then the next slide. The next one. In this
14 slide you can see the proposed new pier and the location of
15 the Larsen pier 37 feet out from the end of the pier. Note
16 the circles around the Larsen and Parker buoys. Those areas
17 are essentially foreclosed by use at this time because at any
18 one point if the wind shifts, a buoy can move within that
19 circle. The removal of those two buoys will clearly add
20 additional open usable amount of navigation area within the
21 breakwater so that the public and the owners within that
22 breakwater will have more accessibility and navigability
23 within the breakwater.

24 Next slide. This is essentially the same

1 information.

2 Next slide. Again, this emphasizes the area
3 shown by the areas impacted both by those two swing arcs of
4 those buoys. When we talked to the Corps of Engineers, they
5 pointed out that they needed more information about the
6 navigability.

7 The next slide and series of slides showed the
8 opening to the existing breakwater in the area of the
9 project.

10 Next slide. That's showing that the pier was in
11 place in '69.

12 Next slide. We looked at these locations in the
13 project area at the request of the Corps to add more
14 information for them and for their evaluation of the
15 navigability within breakwaters, both public and private,
16 within the project area.

17 Next slide. This is the Ski Run Marina over in
18 South Lake that you can see there that the area of access at
19 Ski Run, the access is 26-feet wide. Further in it's 21-feet
20 wide. And the area within the navigation of the buoys and
21 breakwaters within those -- both within the breakwater is
22 about 35 feet.

23 Next slide. This is the Lakeside Marina in South
24 Lake Tahoe down the hill from the casinos and redevelopment

1 area. On this side, the outer most entry is 25-feet wide.
2 Then the area in the middle is 45-feet wide. And then area
3 within where the boats park, the slips, is 25-feet wide.

4 Next slide. The Elks Point Marina is still more
5 confined. The outer area is 27 feet. The inner area 20
6 feet. And the area within the harbor is 42 feet.

7 We're going to run through the next slides
8 quickly. But you can see this area here in Marla Bay is
9 25-feet opening. This one here at 1180 Highway 50 in Zephyr
10 Cove, the opening there is 19-feet wide. This is at a
11 location of the project. And then this one is nine feet --
12 19-feet wide.

13 Next slide please. This is 1180 Highway 50 in
14 Zephyr Cove. And you can see here that there is 25 and
15 26-feet wide opening there.

16 Next slide. This one is even tighter.

17 Next slide. This is in Glenbrook. And that one
18 is 14-feet wide to the area within the breakwater. It's not
19 possible to go under the pier to get there. What this shows
20 is that the Larsen Parker pier in the breakwater is similar
21 and actually a little wider at the entry than is the case in
22 the other areas. And also the distance from the end of the
23 Larsen Parker proposed pier is 48-feet wide on the south side
24 from the pier to the south side of the breakwater and 69-feet

1 wide on the other side. So, clearly, this project would
2 increase navigable space, not decrease it, with the removal
3 of the buoys.

4 And the Corps and the Coast Guard, after
5 reviewing this information, has now said they're proposed to
6 approve the pier and make it -- allow it to move forward.

7 Now I'll introduce Mr. Rich McGuffin who will
8 conclude our presentation.

9 MR. MCGUFFIN: Mr. Carey, would you mind putting
10 the slide show back on slide two. When we had our call, the
11 Division asked us specifically to focus on NAC 322.190, which
12 I will attempt to do quickly now. I think we have about six,
13 seven minutes left, if I'm correct.

14 Anyhow, first, let me just go through some of
15 these factors, which is what the Division needs to evaluate
16 in making the determination of whether or not to authorize
17 the use which we have applied for.

18 One, the location and density of existing piers,
19 breakwaters, mooring buoys, water and state lines and other
20 structures within the area. Mr. Magrath pointed out that,
21 you know, this pier within the breakwater area would
22 essentially do damage to the adjacent property owners. And
23 as they have consistently claimed that this is some sort of
24 60-year-old common plan, scheme, or enterprise.

1 One, let me disabuse you of that notion. There
2 is no common plan, scheme, or enterprise within this area.
3 60 years ago the neighbors did agree to build a breakwater,
4 but that's where the agreement stops. There is no other
5 agreement. And the neighbors that are objecting will not be
6 able to produce any evidence of any further agreement other
7 than that to construct a breakwater.

8 Furthermore, as you can see from this, from this
9 slide right here, the construction of the pier or the
10 extension of the pier will actually eliminate some of the
11 congestion that currently exists within the breakwater area.
12 As you can see by the swing arc that currently exists with
13 the four buoys in the breakwater, there is significant
14 congestion. However, when you remove two of those buoys and
15 when the Bumb Trust properly places their buoy as they're
16 required to do by the Division of State Lands, then a lot of
17 that congestion will go away and, you know, vessels will be
18 able to navigate more freely within the confines of the
19 breakwater.

20 At present, the biggest impediment to navigation
21 within the breakwater is the 28-foot opening and the
22 improperly placed buoy that the Bumb Trust, I assume, is
23 going to relocate.

24 So I think that, and in conjunction with the

1 slides that Mr. Midkiff just went through, shows or
2 demonstrates that the request or the application that we've
3 submitted to NDSL is not that different from other structures
4 on the east shore of Lake Tahoe. In fact, there's greater
5 density in some of those other areas than there is here,
6 which leads me straight in to the potential interference with
7 navigability.

8 I think it's important that we properly
9 understand this term. There was a document or an e-mail
10 recently provided by the Division of Wildlife saying that the
11 construction of the pier would have an adverse impact on
12 navigation. And I really don't think that there's too big of
13 an understanding of what navigation is. On October 31st,
14 1864, when Nevada became the 36th state in the union, they
15 took title to all navigable bodies of water within the state.

16 Now, when you start talking about navigable
17 bodies of water, that term arises from the public trust
18 doctrine. And within that doctrine, when you start to
19 determine what a navigable body of water is, it's whether
20 that water has the capability produced by the public for the
21 purpose of transportation. Basically whether or not a member
22 of the public will be able to access that navigable body of
23 water.

24 In the State of Nevada there are several

1 navigable bodies of water that have been declared navigable,
2 either because they were navigable in fact when Nevada became
3 a state or because they've been declared navigable by
4 statute.

5 In this case, the construction of a pier will not
6 adversely impact the navigability within this area as
7 previously discussed. It's going to increase the
8 navigability within the lagoon because it's going to clear
9 the way for vessels to access the waters of Lake Tahoe.

10 Now, some of the objections that have been stated
11 by the Bumb Trust are all based on either misunderstandings
12 of fiction. One of the things that they have talked about is
13 that there will be a boat moored to the end of the pier. At
14 no time has Larkin -- Larsen or Parker ever asserted that
15 they would moor a boat to the end of the pier. That's simply
16 false.

17 In fact, they would be more than happy to have a
18 condition of their permit, either with NDSL or TRPA, state
19 that they cannot moor a boat to the end of the pier. They've
20 also stated that the placement of the buoys that are located
21 outside of the breakwater, as you can see on the western most
22 part of the current slide, that those would, you know, later
23 be relocated inside of the breakwater. That is also false.
24 There is no plans to relocate those buoys inside of the

1 breakwater. The mooring will be the boat buoys that are
2 located on the sides, on the north and south sides of the
3 pier.

4 You know, so I think it's very clear from this
5 visual display that navigability will not be adversely
6 impacted. In fact, it will be assisted with the construction
7 of the pier.

8 So to get through some of the other factors here.
9 The construction of the pier will not have any impact on the
10 stability of the shore line. Mr. Midkiff talked about the
11 boulder that is located to the south side of the present
12 pier, which will remain in place so as to not have any
13 adverse impact on the stability of the shore line.

14 And I also want to point out -- Mr. Carey, if you
15 can go to slide four. One of the things which -- I don't
16 remember if it was Mr. Hall or Mr. Magrath.

17 HEARING OFFICER STAHLER: Mr. McGuffin.

18 MR. MCGUFFIN: Yes.

19 HEARING OFFICER STAHLER: Hi. Yes. You are over
20 time. Your 20 minutes has elapsed. How much time do you
21 think you'll need in order to finish your presentation?

22 MR. MCGUFFIN: Can I have three minutes?

23 HEARING OFFICER STAHLER: Yes, you can have three
24 minutes. Yes, that's fine. We want you to be able to

1 finish.

2 MR. MCGUFFIN: One of the things that they
3 pointed out was that there was a boulder at the end of this
4 pier, so it could never have been used as a pier. I would
5 also like to point out that this pier, since 1969 when it was
6 originally constructed, has deteriorated significantly. And
7 you will also see that there's a bunch of rebar that is
8 located at the tip of the pier because it has been cut down
9 and lost size over the years. So, this pier originally
10 extended out past that boulder, and that should be noted.

11 Going back to some of these other -- other
12 factors. In filing our applications with NDSL, as well as
13 TRPA, the applicants have conformed with all the applicable
14 requirements of law, regulation, and policy.

15 The impact to the adjacent property owners,
16 again, the Bumb Trust is relying on some interesting fictions
17 when they say that they will be adversely impacted. They
18 believe that this will -- I just heard them say for the first
19 time that this will adversely affect their property values,
20 yet there's no evidence to substantiate those claims. They
21 think that the Larsens and the Parkers are going to be having
22 late night parties on the pier. I can assure you that that
23 will not be the case.

24 You know, needless to say, the factors work to

1 the benefit of the applicants, Larsen and Parker.

2 And I will point out, in conclusion and because
3 of time constraints, that Applicant Parker and Applicant
4 Larsen are in fact littoral. This is argued ad nauseam in
5 the files or in the papers that have been filed with the
6 Division of State Lands. And I would encourage you, as
7 Mr. Magrath encouraged you, to read through those arguments.
8 I believe that they are convincing in our favor.

9 And I appreciate your time. And hopefully I
10 didn't go over my additional three minutes. Thank you very
11 much.

12 HEARING OFFICER STAHLER: Okay. Thank you,
13 Mr. Midkiff and Mr. McGuffin. Thank you for the presentation
14 and the information.

15 As you're aware, the Division of State Lands
16 receives applications for the use and the occupancy of state
17 lands, including sovereign lands at Lake Tahoe. The agency
18 evaluates those applications on criteria, as you've
19 referenced in NAC Chapter 322.

20 And so, if you don't mind, I do have a couple of
21 follow-up questions for you to help us with our analysis and
22 our evaluation. They're not intended to suggest acceptable
23 or approvable design standards. I just want to make that
24 clear. Rather, they are intended to elicit additional

1 information to assist with our determination on the
2 application. So, if you don't mind, I'll get started with my
3 follow-up questions.

4 I noticed in the application that you propose a
5 12,000 pound boat lift, boat hoist. And I wanted to know
6 what size vessel does that accommodate?

7 MR. MIDKIFF: Well, it depends on the type of
8 vessel. But generally that won't be over about 25 feet.

9 HEARING OFFICER STAHLER: And that's 25 feet in
10 length?

11 MR. MIDKIFF: Yes. I'm sorry.

12 HEARING OFFICER STAHLER: Would you happen to
13 know what kind of a typical width of a boat that would access
14 that pier would be?

15 MR. MIDKIFF: Well, the bumps on the lifts are
16 about eight feet long. And in no case would any boat be
17 wider than eight feet.

18 HEARING OFFICER STAHLER: All right. Thanks.

19 The size of the cove, we wanted to know about the
20 serviceability of the cove in general, because it is enclosed
21 by the breakwaters there. Is it navigable under all water
22 level conditions?

23 MR. MIDKIFF: Generally when the lake is lower
24 than about 23 -- 6223 or 6224 even, the inner most areas of

1 the cove are not navigable by a large boat. When it's lower
2 than about 23, there's almost no navigable area within the
3 breakwater.

4 HEARING OFFICER STAHLER: Have you guys done any
5 analysis of lake levels maybe over the past ten or 20 years
6 to show how often or how many years at a time the lake is at
7 that low lake level, possibly putting at risk the
8 serviceability of the pier?

9 MR. MIDKIFF: Well, we haven't done a
10 year-by-year study. But in the last 20 years there probably
11 have been five, six, maybe a few more years when the pier
12 would not be usable. But that's the case probably with more
13 than 50 percent of the piers on Lake Tahoe. And the owners
14 of this pier and others know that their use of the pier is
15 subject to the water level of the lake and there will be
16 years when the pier was not -- will not be serviceable by
17 vessels.

18 MR. MCGUFFIN: Just to piggyback on that comment,
19 in one of my responses to the objections, I provided pictures
20 of the area dating back multiple years. I think I provided
21 at least ten or 11 pictures from Google Earth showing the
22 water levels of the cove. So I think you can see -- You get
23 a fairly good representation of what the water levels look
24 like within that area over the years.

1 HEARING OFFICER STAHLER: You provided us with a
2 lot of examples of similarly-constructed marinas and piers
3 with breakwaters. And I wanted to know what you're saying is
4 that this is a common design. But we're interested also in
5 navigation and ensuring the safety of vessels as they're
6 navigating through the breakwater and entering in to the
7 cove. Do you know of any incidents or close calls, things of
8 that nature, as a result of the design of some of the
9 examples that you showed us?

10 MR. MIDKIFF: I'm not personally aware of any
11 accidents or close calls. The reason these, all of these,
12 breakwaters and marinas are designed with a relatively small
13 opening is because when the lake is high and the winds and
14 wave conditions are high, those breakwaters are designed to
15 protect the boats and other watercraft within those
16 breakwaters and harbors. And otherwise they wouldn't be of
17 most or -- Excuse me -- much use. So that's why almost all
18 of the pier's and marina's breakwaters are about 25 or less
19 feet wide.

20 HEARING OFFICER STAHLER: Okay. I have a few
21 more. Bear with me. We have received -- This agency has
22 received comment letters and photos showing the cove at lower
23 lake levels and the existence of a natural reef on the inside
24 portion of the northern breakwater at its southern end. So

1 at low lake conditions, level conditions, do you believe that
2 that natural reef would pose a navigation hazard to members
3 of the public or neighbors who are entering in through the
4 mouth of the breakwater and navigating to the north of the
5 cove?

6 MR. MIDKIFF: No. In my experience as a boater
7 on Lake Tahoe in the last 20-odd years since I finally got a
8 boat, when you're out on the lake, you know that when you're
9 near the shoreline there are large rocks in many locations,
10 especially on the east side of the lake because of the wind
11 and the wave situation that the roads, the sand along the
12 shoreline. I don't believe that the situation here is any
13 different or worse than any other area. You just have to be
14 careful when you're going in to near shore areas.

15 MR. MCGUFFIN: Furthermore, I think that that
16 reef only becomes an issue in years where the lake level is
17 significantly lower than it is now. So the likelihood that
18 you're going to have a vessel in that area is extremely low.
19 So, you know, would that become a potential navigational
20 hazard when the water is low? Possibly. But I think it's
21 highly unlikely that when that reef is capable of becoming a
22 navigational hazard that you're going to have a boat in that
23 area. I think that it's somewhat of a distraction because
24 you're not going to have a boat in that area when in fact it

1 is an issue. It's just the water level is to sustain vessels
2 in the broader area.

3 MR. MIDKIFF: Well, for instance, most Tahoe
4 boats are inboard/outboard and they require 30 to 36 inches
5 underneath the keel to kind of navigate in the waters because
6 of that. When their outdrive is down, it extends up to 36
7 inches below the keel of the boat. So motorists know that
8 and they're careful when they're in the shore. And, as Rich
9 says, they're not going to be coming in with a boat in an
10 area that they know they're in the low water. They could
11 damage their prop and their boat.

12 HEARING OFFICER STAHLER: Okay. Thank you. So
13 just switching tracks a little bit, if the public wanted to
14 moor in this cove on sovereign lands, where would they do
15 that?

16 MR. MIDKIFF: Well, if the public comes in and
17 wants to moor in that area, they're probably going to beach
18 their boat because of the locations of the Bumb and MacSween
19 buoys that are still going to be there and -- Otherwise,
20 there is the potential for short-term mooring on the sides of
21 the pier. As Rich McGuffin indicated, it was not our intent
22 to moor on the end of the pier on the adjustable cat walk.
23 That's there to allow boarding and loading and unloading from
24 a boat rather than mooring.

1 HEARING OFFICER STAHLER: Okay. Thank you. Do
2 you know if the applicant has considered modifying the
3 breakwater to address potential navigation concerns?

4 MR. MIDKIFF: How so?

5 HEARING OFFICER STAHLER: How so? I'm just
6 asking if they have considered it.

7 MR. MCGUFFIN: The breakwater was recently -- was
8 recently -- I don't want to use the word rebuilt. But
9 maintained so as to continue to be useful. And that was
10 actually something that the applicants, Larsen and Parker,
11 did in conjunction with the Bumb Trust. So, you know, they
12 maintained the breakwater so they would continue its
13 usefulness.

14 I think it's important to note what Mr. Midkiff
15 said earlier, in that the opening to the breakwater is
16 purposeful so that the waters within the breakwater maintain
17 their stillness. So even when the lake is choppy and
18 disturbed, the waters within the breakwater are still calm so
19 that the vessels can move freely. If they were to open the
20 mouth of the breakwater, it would not be nearly as effective.

21 So, one of the things that the applicants, Larsen
22 and Parker, did with the Bumb Trust was to pick up some of
23 the boulders that had fallen off the breakwater and put them
24 back, you know, to the place from where they had fallen.

1 I don't know that there's any interest within
2 this group, you know -- Mr. MacSween can certainly speak for
3 himself and Mr. Hall and Mr. Magrath can speak for the Bumb
4 Trust. But I don't know if there's any interest between the
5 four of them to change the function of the breakwater.
6 Because I think it actually serves the purpose quite well.
7 And I don't think that it in any way impedes navigation.

8 You know, when I said that the breakwater was the
9 biggest impediment to navigational safety, I was saying it
10 tongue in cheek because that would be the narrowest point
11 which the vessel has to go through, as opposed to the rather
12 large gaps between the north and south side of the extended
13 pier and the breakwater, which I believe are 48 feet and 46
14 feet respectively. Something along those lines.

15 HEARING OFFICER STAHLER: Okay. Thank you.
16 During a recent visit to Lake Tahoe, NDSL staff noticed
17 people enjoying the waters of the cove on paddle boards and
18 other non-motorized watercraft. If this project were to be
19 approved, how would non-motorized recreation be maintained
20 over sovereign lands?

21 MR. MCGUFFIN: I think they would still be able
22 to do that. I mean, one, and if you look at the second slide
23 that we were looking at earlier with the removal -- with the
24 removal of the two buoys beyond those 50-foot swing arcs,

1 you're going to see a significant increase in visibility.
2 And you're also going to be taking two boats out of the
3 water, which are there quite often. You know, Mr. Larsen's
4 boat will now be moored, be affixed basically, to the pier,
5 as will Mr. Parker's. So you're not going to have boats
6 swinging around, you know, on these potential 50-foot swing
7 arcs. So people will actually be able to move more freely
8 within the cove.

9 Gary, do you want to add?

10 MR. MIDKIFF: Yeah. The pier -- The end of the
11 pier will be 37 feet from the -- from where the Larsen buoy
12 center is located. So that's going to open up because the
13 end of the pier is 69 feet from the nearest edge of the
14 northern breakwater and 48 feet from the nearest edge of the
15 southern breakwater. There's going to be a lot more opening
16 for other watercraft, paddle boards, and so forth than there
17 is now.

18 HEARING OFFICER STAHLER: So we understand that
19 there have been previous iterations of this project. A
20 project was submitted in the year 2000 in kind of a similar
21 design, as far as we can tell. I would like to know how is
22 this project different than the one that was submitted in the
23 year 2000. How has the design changed? There were
24 previously-identified concerns with navigation. Has this

1 design been modified from that 2000 design in order to
2 address those concerns? And relatedly --

3 MR. MIDKIFF: The pier was shortened to allow
4 more room between the end of the pier and the breakwater.

5 HEARING OFFICER STAHLER: Can you tell me by how
6 much it was shortened?

7 MR. MIDKIFF: I don't recall exactly what the
8 length was in 2000, 2001. It seems to me it was 110 or 115
9 and now it's going to be just over a hundred feet. And, as I
10 mentioned, it's 37 feet short of the Larsen buoy and 69 feet
11 from the northern shore of the breakwater and 48 feet from
12 the other side. So it's less of the length. And with the
13 addition of both hoists moving the boats from buoys on the
14 boat hoist is also an addition that makes it more usable
15 inside the breakwater.

16 HEARING OFFICER STAHLER: All right. I
17 appreciate you answering my questions. I just have one final
18 question. Was curious to know -- Oh, two questions. I was
19 curious to know if you knew -- In the year 2000, when the
20 applicant submitted their application, they subsequently
21 withdrew it. Do you know why they withdrew their
22 application?

23 MR. MIDKIFF: Primarily because of the opposition
24 and the cost of the pier.

1 HEARING OFFICER STAHLER: You had also mentioned
2 previously that the US Army Corps of Engineers and the Coast
3 Guard are reconsidering the permit. Can you please expand on
4 that.

5 MR. MIDKIFF: Yes. I saw a couple of days ago a
6 notice that was circulated from the Corps that indicated
7 their intent to proceed with the issuance of the permit. And
8 I was able to talk yesterday with Jennifer Thomason with the
9 Corps, and she indicated that they have, with using material
10 that we submitted the last series of slides that show that
11 all of the public and private facilities in the south and
12 east areas of the lake are very similar in terms of the
13 entrance width and so forth of the different public and
14 private facilities. And, based on that, the Corps, in
15 corporation with the Coast Guard, evaluated that and have
16 determined that they have no further issues with the
17 navigation issue with the project.

18 HEARING OFFICER STAHLER: Okay. Thank you.
19 Thank you, Mr. Midkiff and Mr. McGuffin. I appreciate the
20 follow-up information. That's all of my questions.

21 So, with that, I'll close this agenda item and
22 open Agenda Item 4, public comment. This is the second
23 public comment period. And we would like to encourage you to
24 make new comments rather than restate comments we've already

1 heard. But you are able and free to comment as you wish.

2 And so I'll first start with those who are
3 participating by Lifesize. If you could please indicate to
4 me if you're interested in providing public comment. Do I
5 have any hands raised? Okay. Mr. Hall, Mr. Magrath, and
6 Mr. MacSween, can we take you in that order?

7 MR. HALL: Certainly.

8 HEARING OFFICER STAHLER: Go ahead, Mr. Hall.

9 MR. HALL: Thomas J. Hall for the Bumb Trust. I
10 just wanted to finish up, actually, from what I wasn't able
11 to say. There are several opinions out there that are rather
12 cogent about the littoral status of this particular property
13 by comparison. The first one is at Marla Bay. We just had
14 litigation in Marla Bay where a claimant's upland, claimants
15 claimed littoral status. Judge Thomas Gregory issued an
16 opinion. That's at page 383 -- 283 of the hearing record.
17 And determined on very similar facts with the lot and block
18 subdivision that there was no littoral status.

19 The TRPA representative considering the 2000 pier
20 application that the hearing officer just talked about stated
21 that she had questions about the littoral status of the
22 then-pending pier application.

23 Also, the district attorney, Deputy District
24 Attorney Tom Perkins, raised issues. And that's at page 285

1 and 286. Tom Perkins opined that the Parkers do not own the
2 beach in front of their parcels, which is correct, and that
3 the parcel is not littoral. Stockton Gardens Homes is the
4 true owner and took action to protect their property by
5 recording CC&R's granting permission and granting a series of
6 about ten quitclaim deeds for the littoral parcel. The
7 applicants here have not done that.

8 And probably surprising to everyone is the senior
9 partner of the applicant's counsel, Mr. Ronald D. Alling,
10 issued an opinion August 14th, 2006, where he stated at page
11 314 of the hearing record, it's my conclusion that your
12 property, 638 Lake Shore Boulevard, Douglas County, is not a
13 littoral residence or parcel as defined in NRS 322.0052.
14 This conclusion is contrary to my early advice to you and as
15 a result of my reading of district court case Borla and Yager
16 together with the trial record that gave rise to the court
17 case of Michaelson versus Harvey and the legislative history
18 behind the adoption of NRS 321.595 by the Nevada legislature
19 in 1979, I believe we should commence a quiet title action
20 against the developer of Marla Bay. And if you substitute, I
21 believe we should commence a quiet title action against the
22 developer of Stockton -- Skyland subdivision, the same advice
23 would flow. And, of course, that is the case that we filed
24 by Mike Johnson on behalf of Mission East at page seven --

1 472 of the hearing record.

2 So it goes without doubt in my mind that this is
3 not a littoral parcel. We've given five and six examples,
4 judicial and administrative, plus opinions of counsel that
5 it's not littoral. So we would ask that the application be
6 denied.

7 HEARING OFFICER STAHLER: Thank you, Mr. Hall,
8 for your public comment.

9 We actually have a question here on the side of
10 this table, the State Lands administrator. Go ahead.

11 MR. DONOHUE: Mr. Hall, have you raised this
12 issue with the Douglas County assessor?

13 MR. HALL: Yes, I did. I went and talked to
14 Trent Polen the other day about two weeks ago and discussed
15 the problem around Lake Tahoe, Douglas County side,
16 particularly in Skyland. And I pointed out this case that we
17 cited at page 61 of the hearing record. He's aware of the
18 situation.

19 What they did in Douglas County is they tried to
20 approximate the low water mark and by a dot line on their
21 assessor plats. And that's shown on hearing record 61. You
22 can see a dotted line as to the water line. And so they're
23 aware of the situation and they're trying to work out in some
24 way to notify the owners and to adjust something. But he

1 didn't have a conclusion.

2 I did point out the opinion of Mr. Alling in the
3 other cases that I have handled. And he was certainly aware
4 of that and all without conclusion.

5 MR. DONOHUE: Thank you.

6 HEARING OFFICER STAHLER: Mr. Magrath, would you
7 like to go next? Mr. Magrath, I believe you're on mute.

8 MR. MAGRATH: I would like to hear from
9 Mr. MacSween. He was reserving his comments. I would like
10 to hear from him so I can comment. I do have a lot of
11 comments in light of your questions. Thank you. Can we have
12 Mr. MacSween go?

13 HEARING OFFICER STAHLER: Certainly.
14 Mr. MacSween, please go ahead.

15 MR. MACSWEEN: Okay. Can you hear me?

16 HEARING OFFICER STAHLER: Yes.

17 MR. MACSWEEN: Okay. I wasn't getting any
18 projections of any of these drawings that Gary was referring
19 to during the presentation here, so it's a little bit
20 confusing. Am I able to share my screen with you? It seems
21 like it's turned off here. Am I able to share my screen with
22 you?

23 HEARING OFFICER STAHLER: No. We're only
24 providing the applicant's presentation today and not showing

1 exhibits from members of the public. If you could please
2 describe what you're seeing, that would be helpful.

3 MR. MACSWEEN: Oh, sure. I would like to be able
4 to project page eight of his presentation of his --

5 HEARING OFFICER STAHLER: Okay. Mr. MacSween,
6 we're showing slide eight of the applicant's presentation.

7 MR. MACSWEEN: Okay. This comment replies to
8 slide eight. And the subject is that there's no regard for
9 pre-existing agreements. The breakwater was built in
10 agreement between the owners of lot 34, 35, 36, and 37. All
11 lot owners agreed to never encroach on the navigable waters,
12 block another person's access to the lake, or make any
13 alteration to the breakwater without the consent of all lot
14 owners. And I am here to tell you I was there and that is
15 true.

16 And lot 36 is intending -- Larsen is intending to
17 break the current multi-use pier agreement with lot 37.
18 That's for the pier that they have between us. And he wants
19 to abandon that agreement and go with a new agreement.

20 And the other thing that comes in to question is
21 how could he have established a multi-use pier on the other
22 side when he already had a multi-use pier on the side between
23 he and me? It's a little confusing how that ever came about
24 to be.

1 And then the applicant offers no plan for how the
2 current multi-use pier will be supported when he takes down
3 his half, which supports the pier.

4 Okay. And then if you go to page nine of their
5 presentation, navigation. I've been sailing a Hobie Cat out
6 of this breakwater for 52 years. The pier will make it
7 impossible to sail out of the breakwater, even with my skill
8 set. And these people do not understand navigation,
9 obviously, when they're saying that these buoys are going to
10 be -- when they're removed they're going to be less of a
11 navigation hazard. They're talking like these buoys and
12 their swing arc are fixed structures. And anybody who drives
13 a boat or sails knows that you can sail in and out and go on
14 a paddle board or whatever navigable vessel you're in all
15 around inside that breakwater currently, manipulating and
16 maneuvering around those buoys.

17 But a fixed structure is entirely different than
18 a buoy. It will take a highly experienced boat -- If this
19 pier ever goes in, it will take a highly experienced boat
20 driver to be able to enter and exit the breakwater with the
21 motor of the boat.

22 Then, you don't need to go to those slides, but
23 then on slides 15 through 23 includes these pictures of
24 marinas to justify the navigation in the breakwater with this

1 pier.

2 One, I did not sign up to live on a marina. Two,
3 two sailboats under sail do not navigate in and out of
4 marinas. You can't sail in and out of these marinas.
5 They're not navigable with a sail boat under sail. These
6 marinas and breakwaters have additional areas to line up for
7 exiting.

8 But, again, a breakwater is not intended to be a
9 marina. This is a residential place for using the water way.
10 And you will not be able to get in and around this pier and
11 manipulate your way around. Also, if the boat is in the way
12 floating on a buoy, you can kind of push it out of the way
13 and make your way across.

14 Anyway, this is -- the comment that this will
15 open up and make it more navigable is made by people who
16 don't understand manipulating a boat around in that area.

17 False representation. This is off of slide nine.
18 They say they want to make a fully-informed decision. It is
19 impossible when the structure is in question, the scale is in
20 question, and the lines are arbitrarily set without regard to
21 lines and rules currently in place. They're saying that the
22 arc that they have on number 19 are 50 feet. Well, you
23 scaled them, and they don't come anywhere near 50 feet. You
24 have to look more over at the RCI drawing on presentation

1 page number two. And that is more accurate of what a 50-foot
2 arc swing is around a buoy.

3 On page --

4 HEARING OFFICER STAHLER: Mr. MacSween, you are
5 over time. But how much additional time do you think you'll
6 need in order to finish your remarks?

7 MR. MACSWEEN: If I can use my first five minutes
8 now, I would be terrific.

9 HEARING OFFICER STAHLER: I can give -- I can
10 give you three additional minutes, Mr. MacSween.

11 MR. MACSWEEN: Okay. Lot 37, the max swing
12 buoy -- This is also number nine. Lot 37, the max swing buoy
13 is not even shown. The pier will not be the 50-foot swing
14 arc of the -- will not clear the 50-foot swing arc of the
15 buoy. Please look at the RCI drawing on page two and you
16 will see that the max swing buoy 50-foot swing arc clearly
17 crosses the line of the pier.

18 The pier is drawn without boats in the hoist,
19 which does not accurately represent the footprint of the
20 project. The swing arc shown on the buoys is deceiving and
21 does not scale to 50 feet. Compare it to the RCI drawing on
22 page two. It is required that a pier be 20 feet from the lot
23 37 and lot 36 extended lines. The offset line has been
24 falsely adjusted on this drawing to accommodate the 20-foot

1 requirement.

2 And then if you go to slide number 12, the
3 purpose of the pier. In this photo, Parker and Larsen have
4 their boats lured outside the breakwater because the water
5 level is too low to keep the boats in the water. Low water
6 levels last for years and would make it impossible to use the
7 boat hoist on the pier. Point well made by Gary, five years
8 in the last 20 years.

9 Lower water levels will create an extreme safety
10 hazard for kids jumping off the pier. Large piers with
11 unusable boat hoists are used as party decks. The purpose of
12 the pier ends up being an extended deck in to the water for
13 the two properties to obscure the view of many beach-goers.
14 And I've sent you a picture of our neighbor's pier where the
15 people go out there and they spend the entire day out there
16 partying on their new deck out on the water.

17 HEARING OFFICER STAHLER: Mr. MacSween, you have
18 one more minute.

19 MR. MACSWEEN: Okay. Great. Mr. McGuffin
20 referred to, it's incorrect, that these when they redid the
21 breakwater last year that they just piled up rocks that had
22 fallen down over the years. That's totally not correct.
23 They brought in all new rocks and placed on the breakwater.
24 And the amount that the breakwater has broken down over the

1 years has been very minimal. It was a misrepresentation that
2 they stacked up the rocks that had previously fallen down.

3 And one other thing is the reason that breakwater
4 has got a nice wide opening is so it is navigable. Back in
5 the day we used to water ski off of the currently now Bumb's
6 beach, you could make dry starts and come out there and come
7 back in, and you would land the skier. And that was made
8 nice and open for navigation purposes. Anyway, that should
9 be the end for me. Thank you.

10 HEARING OFFICER STAHLER: Okay. Thank you,
11 Mr. MacSween.

12 May I have any other public comments?

13 MR. DONOHUE: Back to Mr. Magrath.

14 HEARING OFFICER STAHLER: Mr. Magrath, please go
15 ahead.

16 MR. MAGRATH: Thank you. I wish I could have had
17 an opportunity to respond to some of your questions. First,
18 if I can show on my screen, I'm not sure if you can see, this
19 is slide number two, look at the circles, the swing arcs,
20 they're different than on slide number nine. Mr. Midkiff
21 says there's 38 feet to the buoy on slide number nine. But,
22 in fact, on the actual photograph they show the swing arc for
23 the Parker and the Larsen buoys, which are 50-foot swing arcs
24 and they're inconsistent with what they're saying to you in

1 their testimony. They show you a lot of photographs of other
2 locations. This is one of them. I'm not sure if you can see
3 this. This is the Elk Point. Excuse me. This is in Round
4 Hill for the Elk Point Country Club. This is one of the
5 existing breakwaters. If somebody in those four lots puts a
6 pier in the middle of that, it will create a navigation
7 hazard. And, in fact, in this location when they put a pier
8 in this location, it will create a navigation hazard. Let me
9 turn this over.

10 When Mr. MacSween tries to pull a boat in -- And,
11 remember, a boat does not have brakes, a sail boat has no
12 brakes. A question was asked are you aware of any close
13 calls. I suggest to you if you allow this pier to be built,
14 every single time a boat enters this breakwater it will be a
15 close call with this pier, even if it's been adjusted. They
16 argue that -- The question was asked what's the difference
17 between the 2000 pier and the 2020 pier. The distance is
18 seven feet. But the 2020 pier is wider. It's wider at the
19 end. And the 2020 pier has a cat walk on the end. So the
20 piers are identical from 2000 to 2020. They're trying to
21 fool you with numbers. The numbers that are on the documents
22 prove that. If you look at all --

23 MR. ROSS: He just muted himself.

24 HEARING OFFICER STAHLER: Mr. Magrath, you are on

1 mute. You need to unmute your device and continue your
2 public comment.

3 MR. MAGRATH: I don't know how that happened. I
4 apologize. Somehow all of the different documents they show
5 you, all of the different lots and breakwaters they show you,
6 they were built with the consent of the owner. The piers
7 were built with the consent of the owner. A lot of times
8 there's deed restrictions where there's more than one owner.
9 And in that case the owner accepts the risk. But here you're
10 forcing -- if this pier is built, you're forcing Bumb and
11 MacSween to accept the risk they don't want to take. They
12 don't want their boat to crash in to the area.

13 Speaking of navigability, this is one of the
14 photographs we've shown you and this was the question asked
15 by the moderator of this meeting. This is a picture of the
16 natural reef that exists in low water. Now, the argument
17 made by Mr. Midkiff is, well, in low water people don't take
18 their boats in there. What that means is that when the pier
19 ends, where the Zodiac boat is located, when the pier ends
20 right there, the Bumb property is forced to go across these
21 rocks, which the photograph proves exists. And the net
22 result is the Bumb Trust navigability to their property is
23 altered. Now they can go around the rocks by going ahead and
24 avoiding those rocks. And so the pier will affect

1 navigation.

2 And, finally, let me make one more comment. You
3 have in front -- I would like you to look in our Bumb Trust
4 exhibit at Exhibits 29 and 28. 28 is a survey done on behalf
5 of Larsen and Parker. This is an example. This is Exhibit
6 29. It's HR. It's the hearing record number 558. You can
7 see the low water mark on this location. You can see the
8 borders, the four corners of lot 35, which is the Parker.
9 And in between is land that is owned by others. It's owned
10 by the Stockton Garden Homes. And under the definition in
11 the NRS and NAC, this property is not -- does not adjoin the
12 low water mark or the bed of Lake Tahoe. The legislature has
13 declared the bed ending at that line.

14 That gap means this property is not littoral as a
15 matter of law. No judge will buy the argument made by
16 Mr. McGuffin. Let him go to court. You should deny this
17 application. Let him go to court. Let him prove up in a
18 quiet title action he owns this land if somebody will buy the
19 argument, gee, my borders really don't matter of my lot.
20 That's what he's saying. There is borders to his lot. He
21 only owns lot 35.

22 We urge you to declare this to be non-littoral
23 but take the next step. Find that this pier, which was tried
24 in 2000 and is now being tried again, should not be approved

1 under NAC 322.190 and these people shouldn't win the million
2 dollar lottery and get a pier on the backs of the two people
3 who suffer, Mr. MacSween and the Bumb Trust. Thank you.

4 HEARING OFFICER STAHLER: Okay. All right.
5 Thank you, Mr. Magrath. Mr. Magrath, if there are any
6 exhibits that you showed to us on your screen today that we
7 don't have in our binder, if you could please submit those
8 electronically to Sherri Barker, we would appreciate that.

9 Do I have any other members of the public
10 interested in making public comment this morning?

11 MR. ROSS: Should I unmute Mr. Parker and see if
12 he has any comments?

13 HEARING OFFICER STAHLER: For those of you on the
14 phone, if you would like to make public comment, please
15 unmute your phone, and you may proceed. It appears we have
16 no public comment on the phone. No hands raised on Lifesize;
17 correct?

18 MR. ROSS: I'm sorry. Rich McGuffin has his hand
19 raised.

20 HEARING OFFICER STAHLER: Mr. McGuffin, you have
21 your hand raised on Lifesize. Go ahead and make your public
22 comment.

23 MR. MCGUFFIN: Am I -- Can you hear me?

24 HEARING OFFICER STAHLER: Yes.

1 MR. MCGUFFIN: If I may, I'd like to address the
2 littoral status of Mr. Parker's lot 35. A lot has been made
3 as to whether or not this lot is in fact littoral. And what
4 Mr. Hall and Mr. Magrath are advocating for is a legal
5 fiction.

6 First of all, they are comparing this particular
7 matter to cases that are factually distinct, being Skyland --
8 Sorry. Not Skyland. But Lincoln Park, Marla Bay, and Zephyr
9 Cove where in fact you have a third party that does in fact
10 retain a legal interest in property between the platted map
11 and low water, which is 6223 Lake Tahoe Datum.

12 In this case what you have is in 1957 George
13 Whittell conveyed the property, which would become the
14 Skyland Subdivision, to Stockton Garden Homes, and in that
15 conveyance he conveyed the property to the waters edge of
16 Lake Tahoe. And this is important because this property was
17 originally conveyed via in land grant in, you know, the
18 1800s. And that grant was based on 1860 government survey
19 which used the meander line. And, in Nevada case law, the
20 meander line and the waters edge of Lake Tahoe are
21 essentially the exact same thing.

22 So when Whittell conveyed the property to
23 Stockton Garden homes, the waters edge of Lake Tahoe, he
24 conveyed it to the waters edge of Lake Tahoe, which by

1 statute, later on NRS 321.595 determined that as of October
2 31st, 1864, when Nevada became a state, the waters edge of
3 Lake Tahoe was effectively 6223.

4 Now, on February 27th, 1958, when Stockton Garden
5 Homes filed their map or recorded their map for the Skyland
6 Subdivision number one, the map and all of its notes
7 specifically state that lots 34, 35, 36, and 37 -- they
8 plotted all of the corners of these lots except for the
9 corners that were beneath the waters of Lake Tahoe. And the
10 lakeward corners of lots 34, 35, 36, and 37, as noted on the
11 map, were beneath the waters of Lake Tahoe.

12 So Stockton Garden Homes conveyed everything that
13 they owned because they conveyed not only to the waters edge
14 of Lake Tahoe but a little bit past the waters edge of Lake
15 Tahoe, because the lot corners were these four lots that
16 we're dealing with right now were under the waters of Lake
17 Tahoe.

18 And, it's interesting, there's a case in Nevada
19 that actually dealt with something similar and I thought the
20 Supreme Court made a very good point. And this is in
21 Michaelson versus Harvey where there was a similar issue.
22 But the Court said, it would have been strange for Church to
23 reserve impliedly a small strip of land along the edge of the
24 lake for herself. Church had intended to reserve title to an

1 area of land adjacent to the high water mark. We believe she
2 would have reserved more than a moderate strip of land
3 between the meander line and the lake bed. In addition, if
4 Church had intended to reserve title to that strip of land,
5 she could have done so expressly.

6 Why is this important? Because Stockton Garden
7 Homes didn't expressly reserve anything in between the lot
8 and the waters of Lake Tahoe because they conveyed everything
9 that they had. And had they wanted to retain an interest in
10 that property, they would have done so expressly.

11 The arguments that Mr. Hall and Mr. Magrath made
12 and then in fact as noted by the Supreme Court is strange.
13 If they wanted to reserve title to a small strip of land,
14 they could have done so and they should have done so
15 expressly but they didn't. Because they knew that they
16 conveyed everything that they had. These properties are in
17 fact littoral.

18 And, as Mr. Magrath indicated, I would be more
19 than happy to take this argument to a Court because it makes
20 sense. And, like many of the arguments that the Bumb
21 Trust -- the attorneys for the Bumb Trust have made, this is
22 just a distraction and it's a legal fiction. These
23 properties have been treated as littoral property by the
24 Division of State Lands, by TRPA basically forever. And

1 there's no reason to change that now.

2 And the absurdity of this argument is that if we
3 were to rule that the Parker lot is not littoral, then we
4 also have to look at the Bumb Trust property and rule that,
5 likewise, it is not littoral as well and revoke their State
6 Lands permits. So thank you.

7 HEARING OFFICER STAHLER: Okay. Thank you,
8 Mr. McGuffin.

9 Grahame, do we have any other hands raised on
10 Lifesize?

11 MR. ROSS: No, ma'am, we don't.

12 HEARING OFFICER STAHLER: Members of the public
13 participating by phone, do you have any last public comments
14 you would like to make? Hearing none, I will now close
15 Agenda Item Number 4, public comment. Thank you. We
16 appreciate your comments.

17 We are now on to Agenda Item Number 5,
18 adjournment. And I would like to thank everyone today for
19 your participation. And a recording will be posted to NDSL's
20 website, land dot NV dot gov. NDSL will consider all public
21 comments submitted and heard today. NDSL is also accepting
22 written comment via e-mail to Sherri Barker, S Barker at land
23 dot NV dot gov, and by regular mail, 901 South Stewart
24 Street, Suite 5003, Carson City, Nevada, 89701. NDSL must

1 receive written comments by the deadline of 5:00 o'clock p.m.
2 Friday, October 9th, 2020. Comments received after this
3 deadline will not be considered.

4 Pursuant to NAC 322.180, the State Land
5 registrar's final decision on this application will take
6 place within 30 days from the date of this hearing.

7 And this public hearing is adjourned. And please
8 take care and have a good afternoon. Thank you.

9 (Hearing concluded at 11:37 a.m.)
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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, CHRISTY Y. JOYCE, Official Certified Court
5 Reporter for the State of Nevada, Division of
6 State Lands, do hereby certify:

7 That on Tuesday, the 6th day of October, 2020,
8 I was present at the Division of State Lands, Carson City,
9 Nevada, for the purpose of reporting in verbatim stenotype
10 notes the within-entitled public hearing;

11 That the foregoing transcript, consisting of
12 pages 1 through 61, inclusive, includes a full, true and
13 correct transcription of my stenotype notes of said public
14 hearing.

15
16 Dated at Reno, Nevada, this 19th day of
17 August, 2020.

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CHRISTY Y. JOYCE, CCR #625