

CALENDAR ITEM

C73

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MINUTE ITEM

This Calendar Item No. C73 was approved as Minute Item No. 13 by the State Lands Commission by a vote of 3 to 0 at its 07/06/95 meeting.

07\06\95

ASSIGNMENT AND AMENDMENT OF LEASE
PURSUANT TO BANKRUPTCY ACTION

J. LUDLOW

J. FREY

PRC 706

BACKGROUND:

This lease was first issued on July 1, 1980 for a term of 40 years with a 9 year renewal term. The leased lands are located adjacent to dredged private lands within the bed of Lake Tahoe at Tahoe City on the North Shore. The lessee of record is K & C Marine, formerly known as K & C Associates.

K & C Marine operates a marina with 160 boat slips and 31 buoys on the leased and private lands. The marina is operated, in part, in a manner similar to a condominium project. Many of the boat slips have been sold to individuals who obtained a personal property interest in the slips and a sublease of a portion of the state owned bed of the lake. Other slips are rented to the public. A gas dock was operated in the past by the lessee. Several concessions, including the tour boat "Sunrunner", have been subleased by K & C Marine over the years.

K & C Marine filed a Chapter 11 petition in Bankruptcy on March 7, 1994. A trustee was appointed on March 30, 1995. Upon notification of the filing of the bankruptcy petition, staff conducted a review of the lease. The following defaults were discovered:

1. Failure to keep percentage of gross payments current.
2. Failure to keep the marina in good repair. A staff engineer has inspected the marina and concluded that portions of the marina may be unsafe and that many of the rock cribs and other structures need extensive repair. It was also noted that debris had been allowed to accumulate on the bed of the lake.

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3. A number of subleases for concessions, including parasailing and the tour boat, have been made by the lessee in the past. These subleases were not authorized by the Commission as required by the lease. Consequently, they constitute breaches of the lease.

K & C Marine, its representatives and the trustee were advised of the defaults.

During the course of the bankruptcy, staff was also advised that K & C Marine had sold the uplands in 1989. The lease requires that the lessee own the adjacent uplands or have a "use right" in them. K & C Marine alleges that it reserved ownership of the lands between the high and low water marks in the sale of the uplands. This point is disputed by the Gibb Trust, the upland owner. Clarification of this point was asked for in order to determine whether the lease had been breached. Staff also observed that there were more than the 31 authorized buoys in and around the marina. Clarification of the ownership of these buoys was requested.

Another area of question was the relationship of K & C Marine to the Tahoe Boat Owner's Association which is composed of all parties who have purchased boat slips from K & C Marine. K & C Marine claims that the Association is not a sublessee. The Association asserts that it is. To the extent that it is, there is a breach of the lease because the Commission has not approved such a sublease.

During the course of the bankruptcy, it was discovered that there was hydrocarbon pollution of the lake occurring. The precise source of the pollution is unknown but thought to be the gas tanks and piping for the gas dock. The pollution is a breach of the lease. The trustee and upland owner have been working with Lahontan Regional Water Quality Control Board to discover the source of the pollution and to eliminate it.

CURRENT SITUATION:

Except for the \$1500 semi-annual minimum rent payment due on July 1, 1995, K & C Marine had become current on the lease payments including penalty and interest. The trustee has made many

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improvements to the premises and has erected signs and fences to keep the public from unsafe areas of the marina.

On June 26, 1995 the Bankruptcy Court approved the trustee's motion for the assumption and sale of the marina to the Marina Investment Group, Inc. which agrees to cure all of the defaults of the lease. Escrow is to close on July 31, 1995. Staff has met with its representatives. A hearing to confirm the assumption and sale of the marina is scheduled for July 10, 1995 before the Bankruptcy Court. Under the Bankruptcy Code the Commission has a right to file an objection to the assumption and sale if wishes to do so.

The dispute between K & C Marine and the upland owner over ownership of the lands between the low and high water marks continues unresolved. The trustee has elected not to litigate this matter. The bankruptcy sale of K & C Marine's assets included whatever interest it had in the adjacent uplands. Therefore, the Marina Investment Group, Inc., if the assumption and sale is approved, will succeed to whatever interest K & C Marine had. The Marina Investment Group, Inc. believes that it can obtain a title insurance policy identifying it as owner of the uplands immediately adjacent to the State's sovereign lands and has agreed to cure all of the present lease defaults and provide assurances of future performance.

The Gibb Trust, owner of the adjacent Roundhouse Mall, vigorously objects to the assignment of the Lease to the Marina Investment Group on the basis that K & C Marine does not own the lands between the high and low water marks. The Gibb Trust had previously made a bid in Bankruptcy Court for the lease and withdrawn it. Further the Tahoe Boat Owners Association has also asked that the Commission consider the assignment of the lease to either the Gibb Trust or to it in the alternative. The Association has never bid for the lease in Bankruptcy Court and has no ownership interest in the adjacent uplands. However, the Association and its individual members have a right of access to the marina through a recorded Declaration creating the Association. Neither of these parties have an approved bid for the lease or other assets of K & C Marine before the Bankruptcy Court.

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Staff is concerned, after reviewing the title documents available to it, that the Marina Investment Group may not be able to meet the requirements of the lease which include a property interest or use right in the adjacent uplands. If the Marina Investment Group has no such rights, staff believes it would be highly unlikely that the Marina Investment Group could manage the lease successfully. Consequently, after reviewing the entire situation, staff believes that the Commission should withhold approval of the assumption and sale and any necessary lease amendments to assure cure of the defaults and future performance of the lease until either the Marina Investment Group, Inc. or the Gibb Trust can clearly establish that it has a property interest or use right in the lands between the high and low water marks as required by the Lease.

AB 884:

N/A

OTHER PERTINENT INFORMATION:

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 this activity is not a "project" as defined by the State CEQA Guidelines.

Authority: P.R.C. 21065 and 14 Cal. Code Regs. 15378.

EXHIBITS:

A. Site Map.

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.

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2. REJECT APPROVAL OF THE ASSUMPTION AND SALE WITH ADEQUATE ASSURANCES OF FUTURE PERFORMANCE OF LEASE PRC 706.1 FROM K & C MARINE TO THE MARINA INVESTMENT GROUP, INC. UNLESS AND UNTIL THE PARTIES AGREE, OR A COURT OF COMPETENT JURISDICTION RULES THAT THE MARINA INVESTMENT GROUP HAS LITTORAL OWNERSHIP OR USE RIGHTS AND ADEQUATE OR APPROPRIATE ACCESS RIGHTS ACROSS THE UPLANDS AND THE MARINA INVESTMENT GROUP CAN ASSURE THE COMMISSION STAFF OF ITS ABILITY TO CURE THE LEASE DEFAULTS AND ADEQUATELY PERFORM THE LEASE COVENANTS IN THE FUTURE.

3. AUTHORIZE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE WHATEVER STEPS, INCLUDING ENTERING INTO AN INTERIM MANAGEMENT AGREEMENT, AS ARE NECESSARY TO ASSURE THAT THE DEFAULTS OF THE LEASE ARE CURED OR, IN THE ALTERNATIVE, TO TERMINATE THE LEASE.

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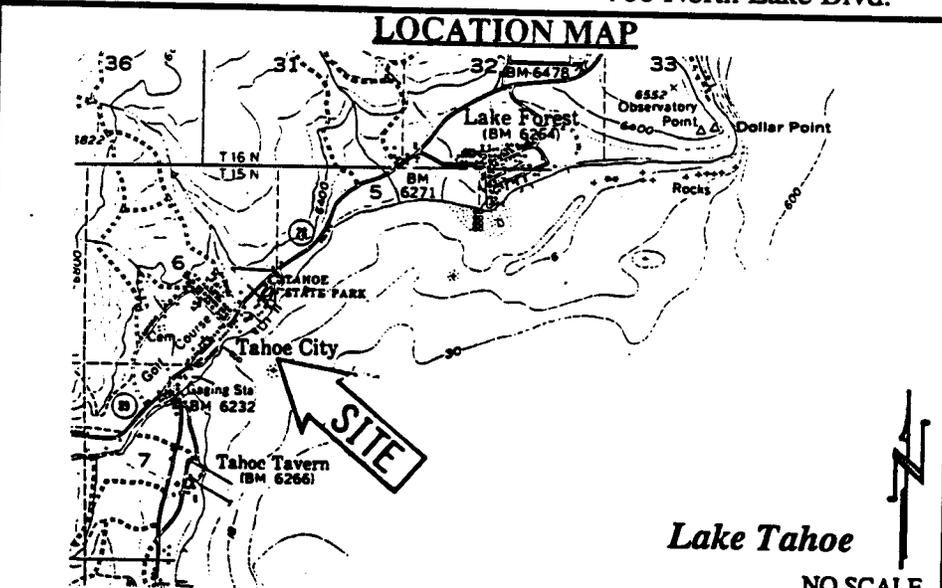
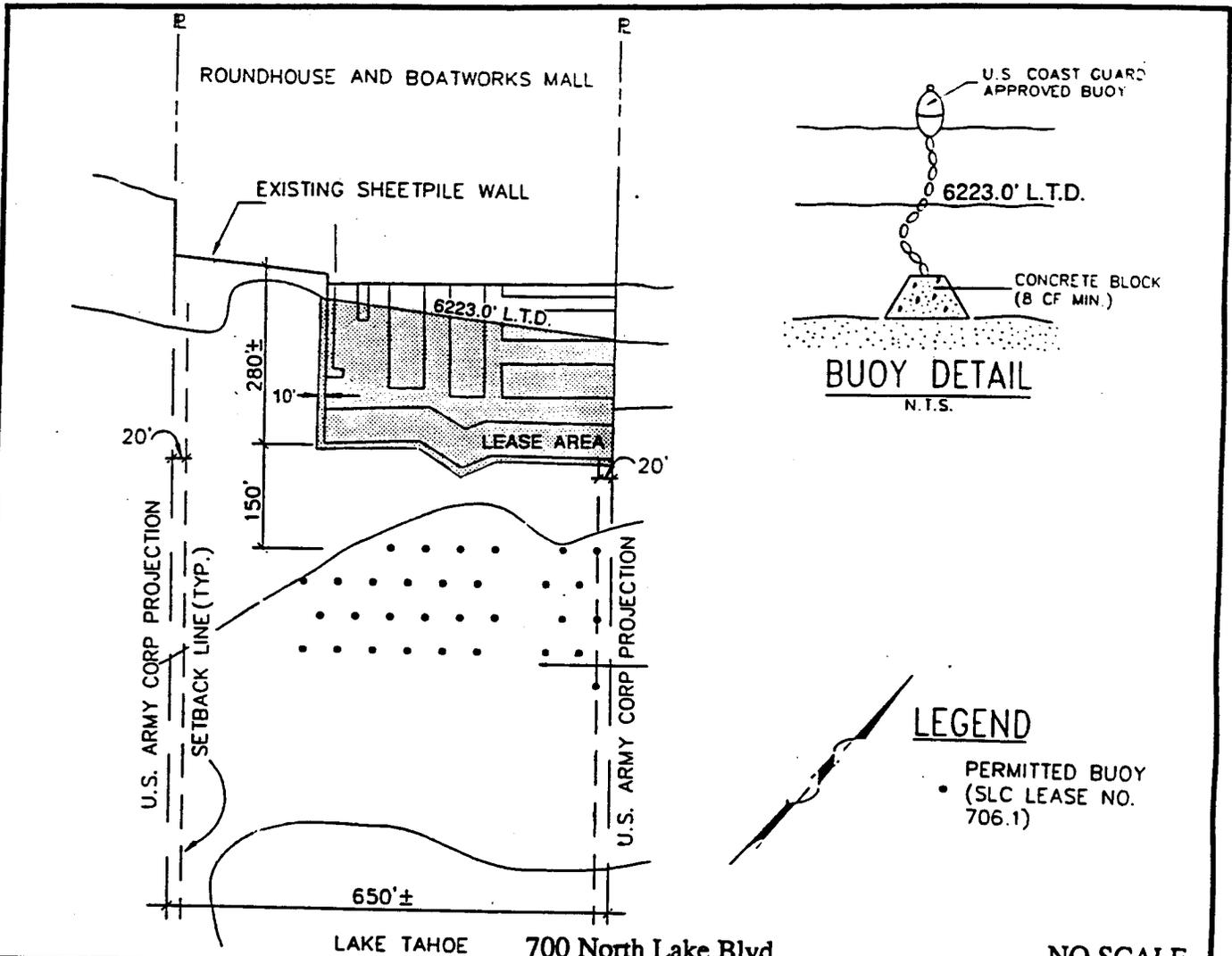


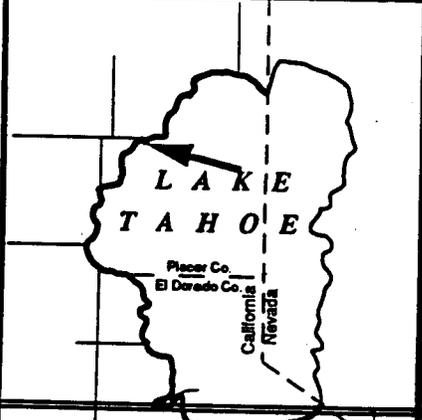
EXHIBIT "A"

PRC 706.1

APN 94 - 090 - 32

Lake Tahoe

PLACER COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

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