MINUTE ITEM
This Calendar Item No. C29
was approved as Minute Item
No. 29 by the State Land
Commission by a vote of 3
to 0 at its 10/28/96
meeting.

CALENDAR ITEM
C29

A 4

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10/28/96
PRC 706.1
J. Ludlow
J. Frey

ASSIGNMENT AND AMENDMENT OF LEASE NO. PRC 706.1
K & C MARINE (ASSIGNOR)
TAHOE MARINA INVESTMENT GROUP (ASSIGNEE/ASSIGNOR)
TAHOE YACHT HARBOR, LLC (ASSIGNEE)

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 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 164 boat slips and 31 mooring 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 areas of concern were identified:

1. Failure to keep payment of royalties current.

2. Failure to keep the marina in good repair. A staff engineer had inspected the marina and concluded that much of the marina was unsafe and that many of the rock cribs and other structures needed extensive repair. It was also noted that debris had been allowed to accumulate on the bed of the lake.

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.

4. Staff was 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 alleged that it reserved the ownership of the lands between the high and low water marks in the sale of the uplands. This point was disputed by the Gibb Trust, the upland owner.

5. Discovery of hydrocarbon pollution of the lake.

K & C Marine, its representatives and the Trustee, were advised of these concerns. Staff worked with the Bankruptcy trustee to resolve these issues.

During the course of the bankruptcy the Trustee determined that it was in the best interests of the debtor's estate to sell the marina lease. The trustee sold the lease to the Tahoe Marina Investment Group (TMIG) pending approval of the Bankruptcy Court and the California State Lands Commission. By law the sale was also conditioned upon the provision of financial assurances and the cure of any defaults. TMIG agreed to cure the defaults and provide the financial assurances.

The approval and concurrence of the Commission was sought at its meeting of July 5, 1995. This was denied because of litigation between TMIG and the Gibb Trust over ownership of the uplands. TMIG and the Gibb Trust were directed to return to the Commission once title to the uplands had been resolved.

CURRENT SITUATION:

Since July 1995, a number of events have occurred. TMIG and the Gibb Trust have resolved title to the upland properties in favor of the Gibb Trust. TMIG has agreed to convey and/or sell whatever interest it has in those properties and the lease to the Gibb Trust. Additionally, the Gibb Trust has formed a new partnership called the Tahoe Yacht Harbor, LLC which will hold title to the lease.

The annual minimum rent and the percentage of gross payments have been brought current. The new lessee has agreed to obtain a letter of credit in the amount of 125% of the prior year's rent to secure future payment of rent under the lease and to increase the insurance limits to $1,000,000.

The new lessee has also agreed to pursue repair of the marina docks and rock cribs. Because of extensive new damage caused by the 1995-96 winter storms, some of these repairs involving the gas dock are already proceeding under the repair and maintenance covenant of the lease. Tahoe Yacht Harbor and the Tahoe Boat Owners' Association have begun to obtain the required permits from the necessary agencies to commence the repairs of the outer cribs and the docks.

The source of the hydrocarbon pollution had previously been identified as a leaking gas tank on the uplands. The tank has been removed and the lines to the gas dock vacated. A new tank and lines were installed in conjunction with the repair of the gas dock.

Previously the Commission approved the encumbrance of the lease as a security for a loan to K & C Marine. The secured party lender has agreed to release the lease as security for the loan.

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

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

EXHIBIT:

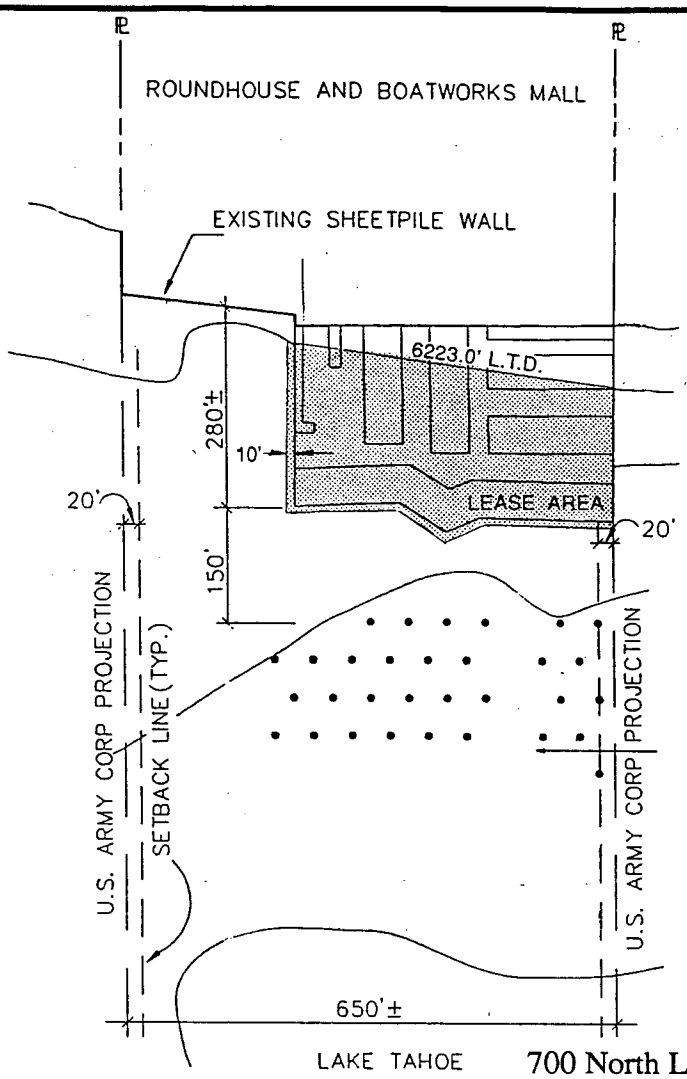
A. Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

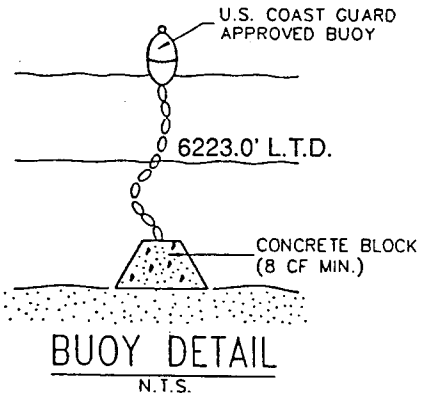
1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND 14 CAL. CODE REGS. 15378.

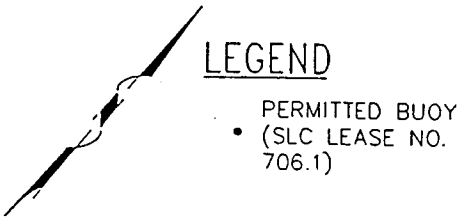
2. APPROVE THE ASSUMPTION AND SALE OF LEASE NO. PRC 706.1 FROM K & C MARINE BY THE TAHOE MARINA INVESTMENT GROUP EFFECTIVE JULY 31, 1995, BY ORDER OF THE U.S. BANKRUPTCY COURT AND ITS SUBSEQUENT ASSIGNMENT TO THE TAHOE YACHT HARBOR, LLC, EFFECTIVE OCTOBER 28, 1996.

3. APPROVE AMENDMENT OF THE LEASE TO: (1) PROVIDE FOR THE ISSUANCE OF A LETTER OF CREDIT IN THE AMOUNT OF 125% OF THE PRIOR YEAR'S RENT; (2) INCREASE THE AMOUNT OF INSURANCE COVERAGE TO $1,000,000; (3) ADJUST RENT RATES AND MAKE OTHER MINOR AMENDMENTS; ALL OTHER TERMS AND CONDITIONS OF LEASE NO. PRC 706.1 SHALL REMAIN IN FULL FORCE AND EFFECT.



700 North Lake Blvd.





NO SCALE

LOCATION MAP

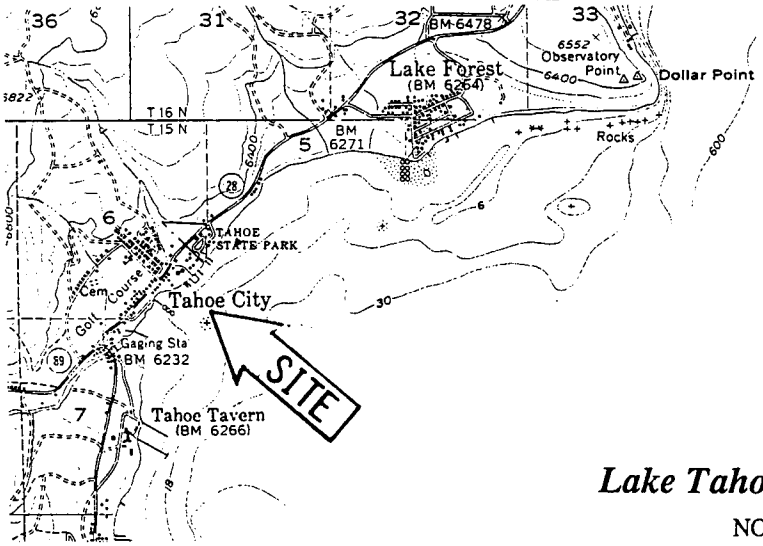


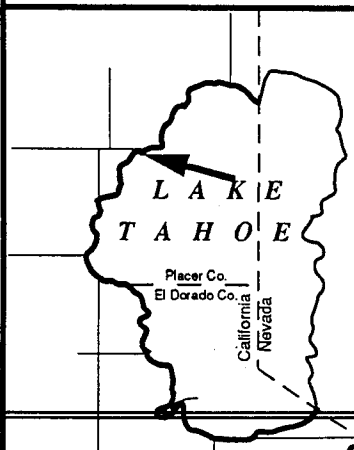
EXHIBIT "A"

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.