

**CALENDAR ITEM
C45**

A 4
S 1

03/29/12
WP 3887.1
N. Lee

GENERAL LEASE - RECREATIONAL USE

APPLICANT:

The Trustees of the Lake Tahoe Park Association
P.O. Box 5771
Tahoe City, CA 96145-5771

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 1700 Sequoia Avenue, near Tahoe City, Placer County.

AUTHORIZED USE:

Continued use and maintenance of two existing piers, swim area with swim line, and 45 mooring buoys previously authorized by the Commission and five existing mooring buoys not previously authorized by the Commission.

LEASE TERM:

10 years, beginning September 29, 2011.

CONSIDERATION:

Two piers and 50 mooring buoys: \$571 per year; prorated pursuant to Public Resources Code section 6503.5; and

Swim area with swim line: \$1,118 per year.

Total Rent: \$1,689 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance with coverage of no less than \$3,000,000.

Other:

1. The proposed lease contains a provision requiring the Applicant to obtain authorization from the Tahoe Regional Planning Agency (TRPA) for the mooring buoy within two years after the adoption of

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a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. This is a continuation of the process the Commission used from approximately 1995 to October 2008 when TRPA adopted an FEIS and Ordinance Amendments supported by the FEIS. In September 2010, the U.S. District Court invalidated the FEIS and nullified the Amendments. When additional information is available, Commission staff will advise the Commission on any suggested modifications to the process used by the Commission pending resolution of the TRPA FEIS and amended ordinance issues.

2. Buoy Allotment Program: The use of the buoy field will be made available to all members of the Lake Tahoe Park Association (Association) in a fair and equitable manner. A buoy allotment program must be maintained during the lease term that will identify how the buoys will be managed, maintained, and distributed for use by the Association's members.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.
2. On March 6, 1991, the Commission authorized a General Permit – Recreational Use with the Trustees of the Lake Tahoe Park Association. That permit expired and the Applicant, which is a property owners association consisting of 708 member lots, is now applying for a new General Lease – Recreational Use for the continued use and maintenance of two existing piers, swim area with swim line, and 45 mooring buoys and the use and maintenance of five additional existing mooring buoys on the lease premises.
3. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law is effective January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission “shall charge rent for a private recreational pier constructed on state lands.” The law provides for two exceptions to the imposition of rent. Those exceptions are for:
 - A. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and

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- B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

Because the application and fees were submitted to the Commission prior to March 31, 2011, the lease meets the statutory requirements for an exception to recently-enacted changes to Section 6503.5 of the Public Resources Code for the term of this lease. Therefore, based on the Applicant's 708 member lots, 684 (97 percent) qualify for rent-free status and the annual rent for the piers and mooring buoys has been prorated according to the qualifying members. However, the swim area is subject to full rent.

4. The Applicant's five additional existing mooring buoys have been in Lake Tahoe for many years, but have not been previously authorized by the Commission. Staff recommends bringing the existing mooring buoys under lease, subject to the Applicant obtaining TRPA permit authorization.
5. After the General Permit expired, the Applicant continued to pay the annual rent in effect during the term of that permit. Pursuant to the expired permit, the annual rent in effect during any holding-over shall be increased by 25 percent. Staff is recommending that the Commission accept the additional 25 percent of hold-over rent in the amount of \$3,081.33 for the period September 29, 1993 through September 28, 2011.
6. Over the past years, Commission staff received several complaints from the public regarding a fence extending into the bed of Lake Tahoe below the high water mark, elevation 6228.75-feet, Lake Tahoe Datum (LTD) from the Applicant's upland property. The fence was located along the Applicant's south side property line as the line extends into Lake Tahoe and was blocking lateral public access along and into the Public Trust easement between the high water mark and low water mark, elevation 6223-feet LTD. Staff contacted the Applicant and requested the Applicant modify the construction of the fence in such a way that it cannot be extended below the high water mark. Commission staff also requested that the fence boards adjacent to one of the two piers be removed. The Applicant agreed to the removal and Commission boundary staff assisted by surveying the high water mark in July 2011. On September 19, 2011, the Applicant provided proof that it had fully complied with staff's request in removing the obstructions to and along the Public Trust easement.

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7. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061) the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Site and Location Map
- B. Land Description

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize acceptance of additional holdover rent in the amount of \$3,081.33 for the period of September 29, 1993 through September 28, 2011.
2. Authorize issuance of a General Lease – Recreational Use to The Trustees of the Lake Tahoe Park Association beginning

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September 29, 2011, for a term of 10 years, for the continued use and maintenance of two existing piers, swim area with swim line, and 45 mooring buoys previously authorized by the Commission and five additional existing mooring buoys not previously authorized by the Commission as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the two piers and 50 mooring buoys: annual rent in the amount of \$571, prorated pursuant to Public Resources Code section 6503.5; consideration for the swim area with swim line: annual rent in the amount of \$1,118 per year, with the State reserving the right to fix a different rent periodically for all facilities during the lease term, as provided in the lease; and liability insurance with coverage of no less than \$3,000,000.

EXHIBIT A

PRC 3887.1

LAND DESCRIPTION

Four (4) parcels of submerged land in the bed of Lake Tahoe, Placer County, California, adjacent to the land described in the deed recorded March 7, 1952 in Volume 604, page 336, Official Records of Placer County, being more particularly described as follows:

PARCEL 1 (South Pier)

COMMENCING at the southeast corner of Lot Four (4) as described in above said deed; thence N 26°09'59" E 368 feet more or less to the most westerly corner of an existing pier, said corner also being the POINT OF BEGINNING; thence N 12°17'21" E 20.52 feet; thence S 77°42'39" E 131.00 feet; thence S 12°17'21" W 32.75 feet; thence N 77°42'39" W 131.00; thence N 12°17'21" E 12.23 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion thereof lying landward of the elevation 6223.0'(LTD).

PARCEL 2 (North Pier)

COMMENCING at the southeast corner of Lot Four (4) as described in above said deed; thence N 22°16'32" E 582 feet more or less to the most westerly corner of an existing pier, said corner also being the POINT OF BEGINNING; thence N 20°12'08" E 20.88 feet; thence S 69°47'52" E 120.00 feet; thence S 20°12'08" W 33.75 feet; thence N 69°47'52" W 120.00 feet; thence N 20°12'08" E 12.87 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion thereof lying landward of the elevation 6223.0'(LTD).

PARCEL 3 (Swim Area)

All that land bounded on the south and north by above described Parcels 1 and 2 respectively; on the east by a line lying 56 feet westerly of and parallel with a line between the most easterly corner of Parcel 1 and the most southerly corner of Parcel 2; and on the west by the ordinary low water mark of Lake Tahoe.

PARCEL 4 (Buoy Field)

COMMENCING at the southeast corner of Lot Four (4) as described in above said deed; thence N 53°40'57" E 156.70 feet to the POINT OF BEGINNING; thence S 75°59'30" E 340.00 feet; thence N 14°00'30" E 637.68 feet; thence N 75°59'30" W 340.00 feet; thence S 14°00'30" W 637.68 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion thereof lying landward of elevation 6223.0'(LTD).

BASIS OF BEARINGS is based on California Coordinate System NAD83, Zone 2. All distances are grid distances.

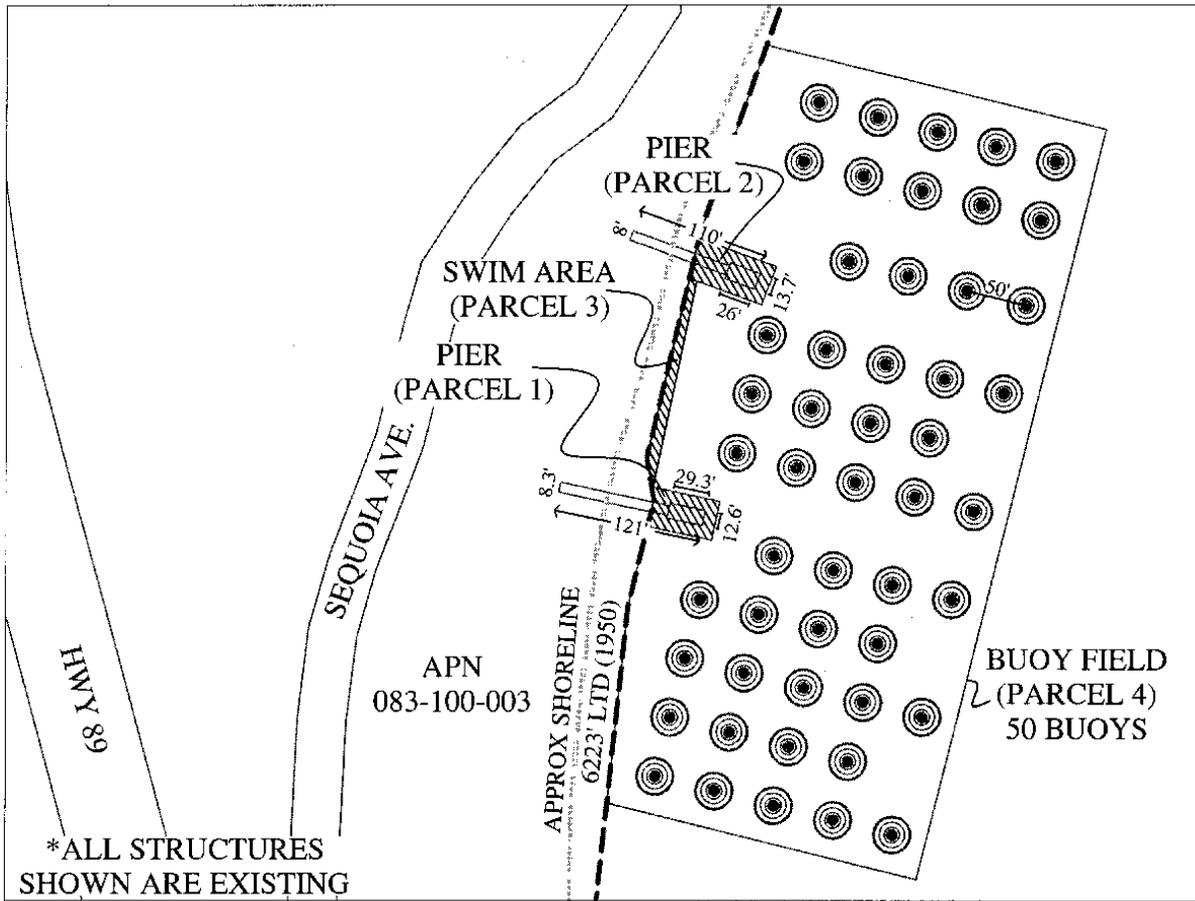
END OF DESCRIPTION

Prepared 3/15/12 by the California State Lands Commission Boundary Unit



NO SCALE

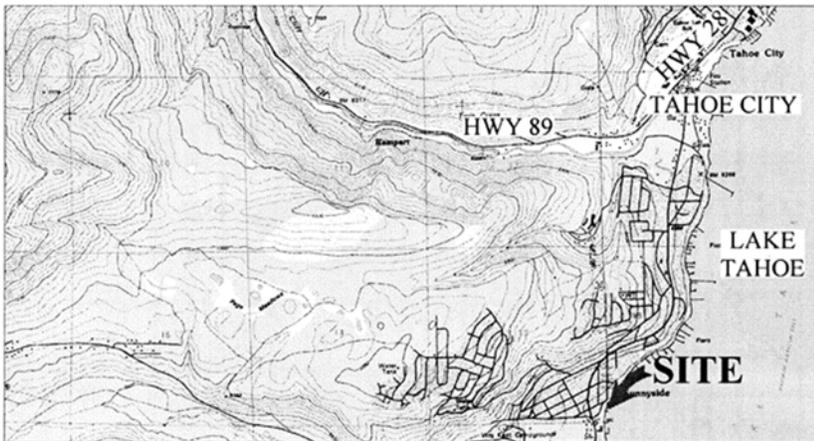
SITE



1700 Sequoia Avenue, Tahoe City

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3887.1
 LAKE TAHOE PARK ASSN.
 APN 083-100-003
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MF 9/23/10

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties 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.