

**CALENDAR ITEM
C35**

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S 1

10/19/12
PRC 1711.1
N. Lee

GENERAL LEASE - RECREATIONAL USE

APPLICANT:

Rubicon Park Estates Improvement Association
c/o Knox, Lemmon & Anapolsky, LLP
One Capitol Mall, Suite 700
Sacramento, CA 95814

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8820 Victoria Circle, near Rubicon Bay, El Dorado County

AUTHORIZED USE:

Continued use and maintenance of an existing pier previously authorized by the Commission; and use and maintenance of an existing swim platform; and relocation, use, and maintenance of 50 existing mooring buoys not previously authorized by the Commission.

LEASE TERM:

10 years, beginning October 19, 2012.

CONSIDERATION:

\$712 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 in the amount of no less than \$2,000,000.

Other:

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

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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 Rubicon Park Estates Improvement 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 upland adjoining the lease premises.
2. On September 29, 1988, the Commission authorized a rent-free Recreational Pier Permit with Rubicon Park Estates Improvement Association (Association) for an existing pier. That permit expired on September 28, 1998. The Association is a homeowners association consisting of 68 members and is now applying for a new General Lease – Recreational Use authorizing the existing pier as well as an existing swim platform and relocation of 50 existing mooring buoys not previously authorized by the Commission.
3. The Association currently maintains a buoy field consisting of 74 mooring buoys adjacent to its littoral common area parcel and other privately- and publicly-owned parcels. The Association is proposing to relocate 50 existing buoys and remove 24 buoys in order to condense the buoys into a field with an orderly grid pattern adjacent to the Association's littoral common area parcel. The Association's buoys and swim platform have been in Lake Tahoe for many years but were not previously authorized by the Commission. The U.S. Army Corps of Engineers (USACE) issued a permit authorizing the reconfigured buoy field and swim platform. Staff recommends bringing the placement of the Association's existing 50 mooring buoys and swim platform under lease, subject to the Association obtaining TRPA permit authorization.
4. In addition, due to recent storm damage, the Association completed repairs to the pier by replacing joists and girders on the main deck and

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replacing the two catwalks. TRPA, USACE, and the Lahontan Regional Water Quality Control Board issued permits for the pier repair project.

5. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law took effect on 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
 - 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, of the Association’s 68 members, 67 (98.5%) qualify for rent-free status and the annual rent for the pier and mooring buoys has been prorated according to the qualifying members. Because the swim platform is not used for the docking or mooring of boats, it is not exempt from rent-free status.

6. **Buoys:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 2, Replacement or Reconstruction; California Code of Regulations, Title 14, section 15302.

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

7. **Pier and Swim Platform:** The staff recommends that the Commission find 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).

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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. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Buoys: 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 2, Replacement or Reconstruction; California Code of Regulations, Title 14, section 15302.

Pier and Swim Platform: 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:

Authorize issuance of a General Lease – Recreational Use to Rubicon Park Estates Improvement Association, beginning October 19, 2012, for a term of 10 years, for the continued use and maintenance of an existing pier previously authorized by the Commission; and use and maintenance of an existing swim platform and relocation, use, and maintenance of 50 existing mooring buoys not previously authorized by the Commission as described in Exhibit A and shown on Exhibit B (for reference purposes

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only) attached and by this reference made a part hereof; annual rent in the amount of \$712, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; and liability insurance with coverage of no less than \$2,000,000.

EXHIBIT A

PRC 1711.1

LAND DESCRIPTION

Three parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 32, Township 14 North, Range 17 East, M.D.M., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 - PIER

All those lands underlying an existing pier lying adjacent to that parcel described in Grant Deed recorded April 30, 1962 in Book 589, Page 413 in Official Records of said County.

TOGETHER WITH a ten foot impact area.

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

PARCEL 2 – SWIM PLATFORM

All those lands underlying an existing swim platform lying adjacent to that parcel described in Grant Deed recorded April 30, 1962 in Book 589, Page 413 in Official Records of said County.

PARCEL 3 – BUOY FIELD

COMMENCING at the westerly terminus of that line described as S 70°51' W 35 feet in Grant Deed recorded April 30, 1962 in Book 589, Page 413 in Official Records of said County, said line also being the southerly line of the parcel described in said deed; thence along said line, or the prolongation thereof N 70°51' E 289.00 feet to the POINT OF BEGINNING; thence continuing along the prolongation of said line N 70°51' E 640.00 feet; thence leaving the prolongation of said line N19°09' W 199.68 feet to a point which intersects the easterly prolongation of the line described as N 70°51' E 72 feet in said Grant Deed; thence along the prolongation of said line S 70°51' W 640.00 feet; thence leaving the prolongation of said line S 19°09' E 199.68 feet to the POINT OF BEGINNING.

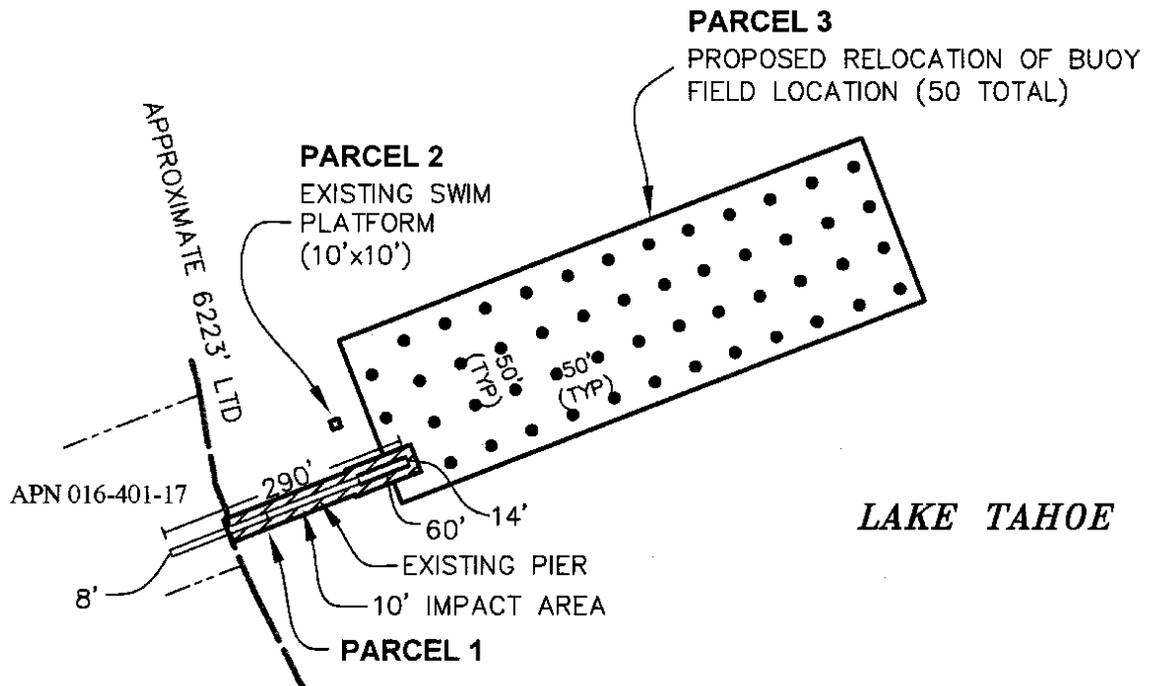
EXCEPTING THEREFROM any portion lying within hereinabove described Parcel 1.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

Prepared 09/17/2012 by the California State Lands Commission Boundary Unit.





LAKE TAHOE

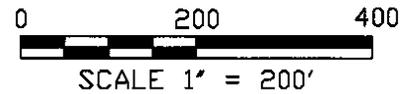


EXHIBIT A

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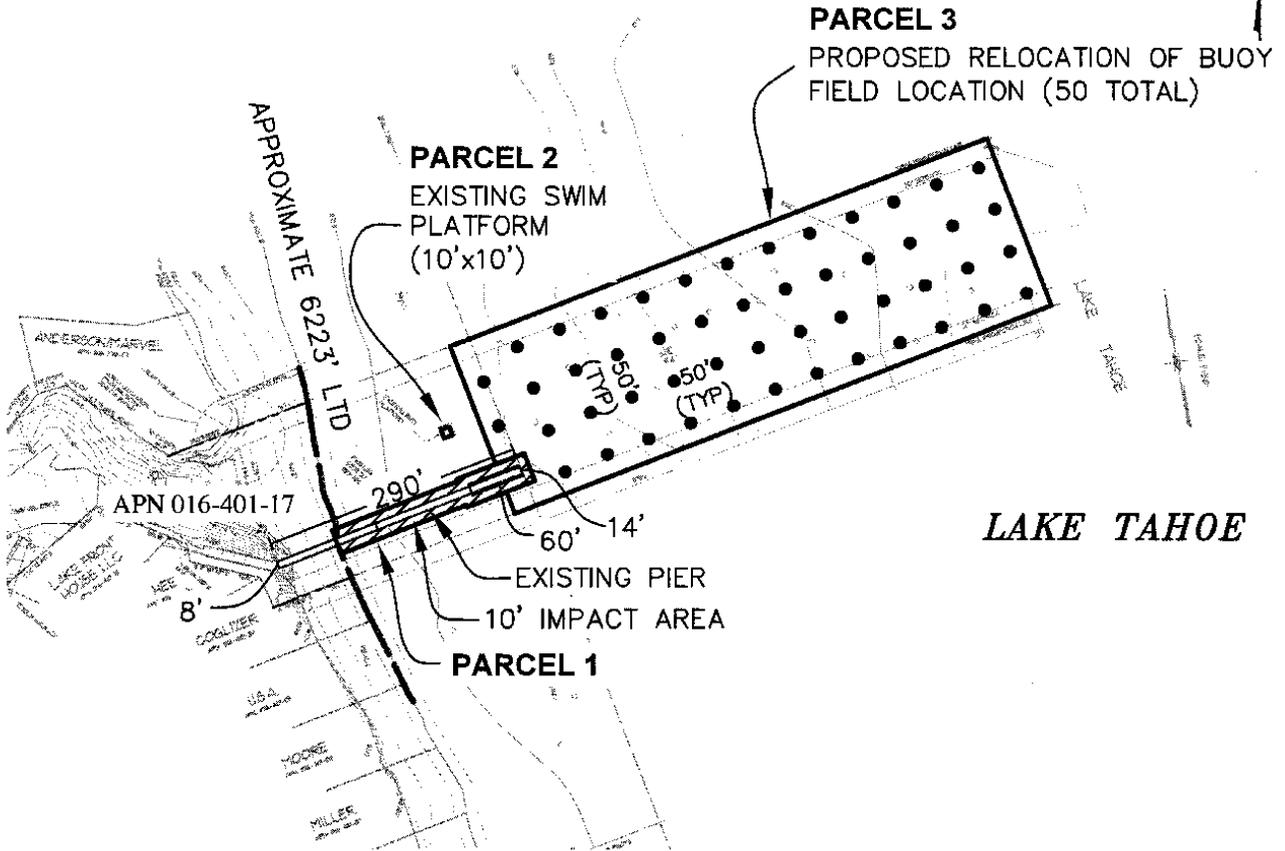
LAND DESCRIPTION PLAT
 PRC 1711.1, RUBICON PARK ESTATES
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



LAKE TAHOE

8820 VICTORIA CIRCLE, NEAR RUBICON BAY

NO SCALE

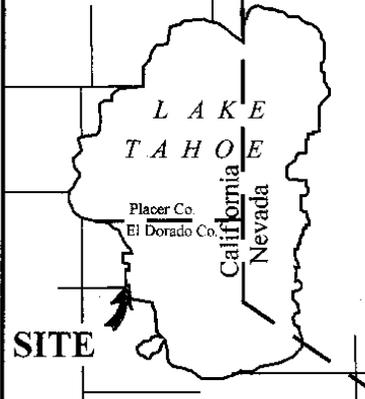
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 1711.1
 RUBICON PARK ESTATES
 IMPROVEMENT ASSOCIATION
 APN 016-401-17
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



DJF 09/26/12

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.