

CALENDAR ITEM

C53

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09/20/13

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PRC 4926.9

M. Schroeder

GENERAL LEASE – RECREATIONAL USE

APPLICANTS:

Roger D. Griffith and Elizabeth A. Griffith

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6966 West Lake Boulevard, near
Tahoma, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boat lift, marine rail, and two
mooring buoys.

LEASE TERM:

10 years, beginning September 20, 2013.

CONSIDERATION:

No monetary consideration pursuant to Public Resources Code section 6503.5.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

Other:

1. The lease contains a provision requiring the Applicants remove all existing unauthorized mooring buoys by October 4, 2013 and provide proof of removal within 10 days of removal.
2. The proposed lease contains a provision requiring the Applicants 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 used from approximately 1995 to October 2008 when TRPA adopted an FEIS and Ordinance Amendments supported by the

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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.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland adjoining the lease premises.
2. On July 6, 1995, the Commission authorized a 10-year Recreational Pier Lease to Steven S. Myers and Paula K. Mathis for the reconstruction of an existing pier, construction of a low level boatlift, and retention of an existing marine rail and two existing mooring buoys. That lease expired on July 5, 2005. On October 21, 1996, the upland property was transferred to Roger D. Griffith and Elizabeth A. Griffith. The Applicants are now applying for a General Lease – Recreational Use.
3. In the lease application, the Applicants requested Commission authorization for a third existing buoy and provided a copy of a buoy permit issued by TRPA in May 2010 permitting more than two buoys per littoral parcel under the then “grandfather clause” adopted by TRPA in 2008.

As background, TRPA adopted new shorezone ordinances in 2008 which allowed permitting of up to three existing private mooring buoys located adjacent to a lakefront parcel if the owner could verify that the buoy had been placed in the lake prior to 1972, or had an existing valid lease for a third buoy from the Commission, or a valid permit from the U.S. Army Corps of Engineers.

Prior to 2008, TRPA ordinances allowed only two existing private mooring buoys per littoral parcel. Commission staff commented to TRPA several times prior to adoption of the 2008 TRPA ordinances that there was no analysis of the need for a third buoy and the ordinance was giving recognition for previously unpermissible buoys. In 2010, the TRPA buoy permits issued under the 2008 TRPA ordinances were found to be invalid by the U.S. District Court. The invalidity of these buoy permits was upheld by the 9th Circuit U.S. Court of Appeals.

4. The Commission’s records indicate that staff was unaware of mooring buoys offshore of this littoral parcel as far back as the first Recreational Pier Permit issued in 1974 that authorized an existing pier. In 1994, the

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then Lessees requested a lease authorizing five existing unauthorized buoys along with reconstruction of the pier, addition of a boat lift, and retention of an existing marine rail system. At that time, staff requested a copy of the TRPA permit authorizing the pier project and the five existing mooring buoys and received a copy of a TRPA permit authorizing the pier project. The TRPA permit did not authorize the five existing mooring buoys. Because the Lessees had five unauthorized mooring buoys, and TRPA ordinances in effect at the time allowed only two buoys offshore of a single littoral parcel, staff informed the Lessees by a letter dated June 16, 1995 that staff would only recommend a lease to the Commission for two buoys. Staff sent another letter on June 20, 1995 requesting the Lessees indicate which three buoys would be removed from the lakebed. In July 1995, the Lessees executed a 10-year lease authorizing the pier reconstruction, addition of a boat lift, retention of an existing marine rail, and two mooring buoys.

In October 1995, the Lessees requested an amendment of the lease to add all three buoys under the lease. Staff again informed them by letter dated February 26, 1996 that we would not recommend additional buoys for the reasons stated above. Staff believed the three unauthorized buoys had been removed.

5. Because of the court decision, TRPA is now operating under the pre-2008 Code of Ordinances which does not have a third-buoy grandfather clause. As determined in 1995, recommending approval for a third, fourth, and fifth buoy would be in direct conflict with the current TRPA Code of Ordinances and the Commission's standard lease provision. The application submitted to the Commission in October 2009 indicated there are four existing mooring buoys in the lake, with a proposal to remove one of the four to be in compliance with the TRPA Shorezone Ordinance in effect at that time. Shortly thereafter, the Applicant removed one of the four bouys. On July 24, 2013, staff wrote to the Applicants advising that staff would not recommend including authorization for more than two buoys in the new lease because of the conflict with TRPA's current code and the Commission's standard lease provisions. Staff requested that one of the three existing buoys be removed.
6. On October 8, 2011, Chapter 585, Statues of 2011 became law. The law became effective on January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which 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

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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 was submitted to the Commission prior to March 31, 2011, the lease meets the statutory requirements for an exception to the enacted changes to section 6503.5 of the Public Resources Code for the term of this lease.

- 7. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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. Land Description
- B. Site and Location Map

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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:

Authorize issuance of a General Lease – Recreational Use to Roger D. Griffith and Elizabeth A. Griffith, beginning September 20, 2013, for a term of 10 years, for the continued use and maintenance of an existing pier, boat lift, marine rail, and two mooring buoys as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; no monetary consideration pursuant to Public Resources Code section 6503.5; and liability insurance in an amount no less than \$1,000,000 per occurrence.

In the event Roger D. Griffith and Elizabeth A. Griffith do not comply with removal of the buoy, anchor and chain by October 4th, 2013, authorize staff of the California State Lands Commission and the Office of the Attorney General to take all steps necessary, including litigation, to remove the unauthorized buoy, including the anchor and chain, from State sovereign land in Lake Tahoe, adjacent to 6966 West Lake Boulevard, near Tahoma, Placer County; to restore the sovereign lands at this location in its condition prior to placement of the unauthorized improvements to the satisfaction of the Commission; and to recover the Commission's damages and costs.

EXHIBIT A

PRC 4926.9

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 8, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, boat lift, catwalk and marine railway boat launch lying adjacent to those parcels described in Grant Deed recorded October 21, 1996 as Document Number 96-0062381-00 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.

PARCELS 2 & 3 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Grant Deed recorded October 21, 1996 as Document Number 96-0062381-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 07/16/2013 by the California State Lands Commission Boundary Unit.



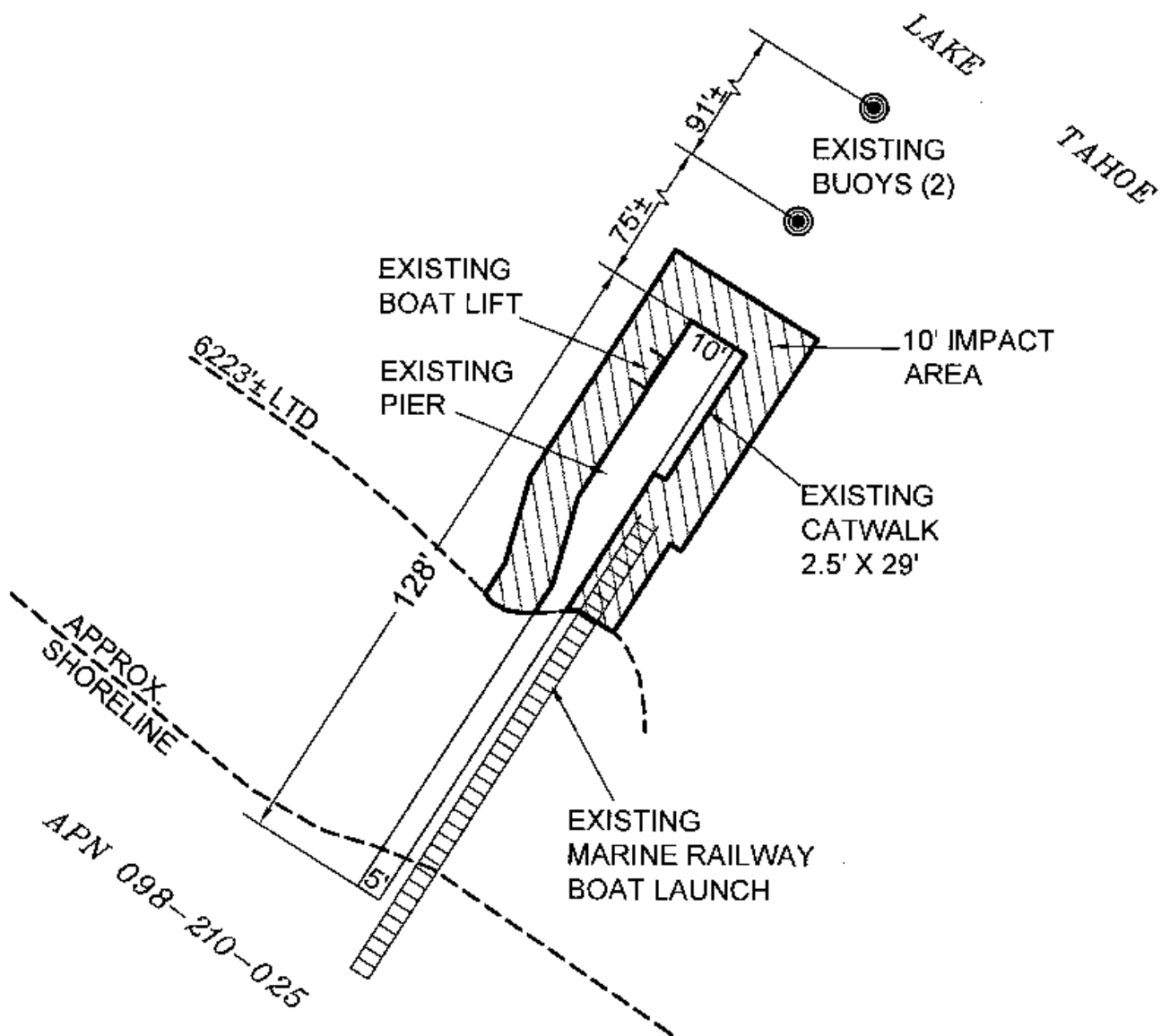


EXHIBIT A

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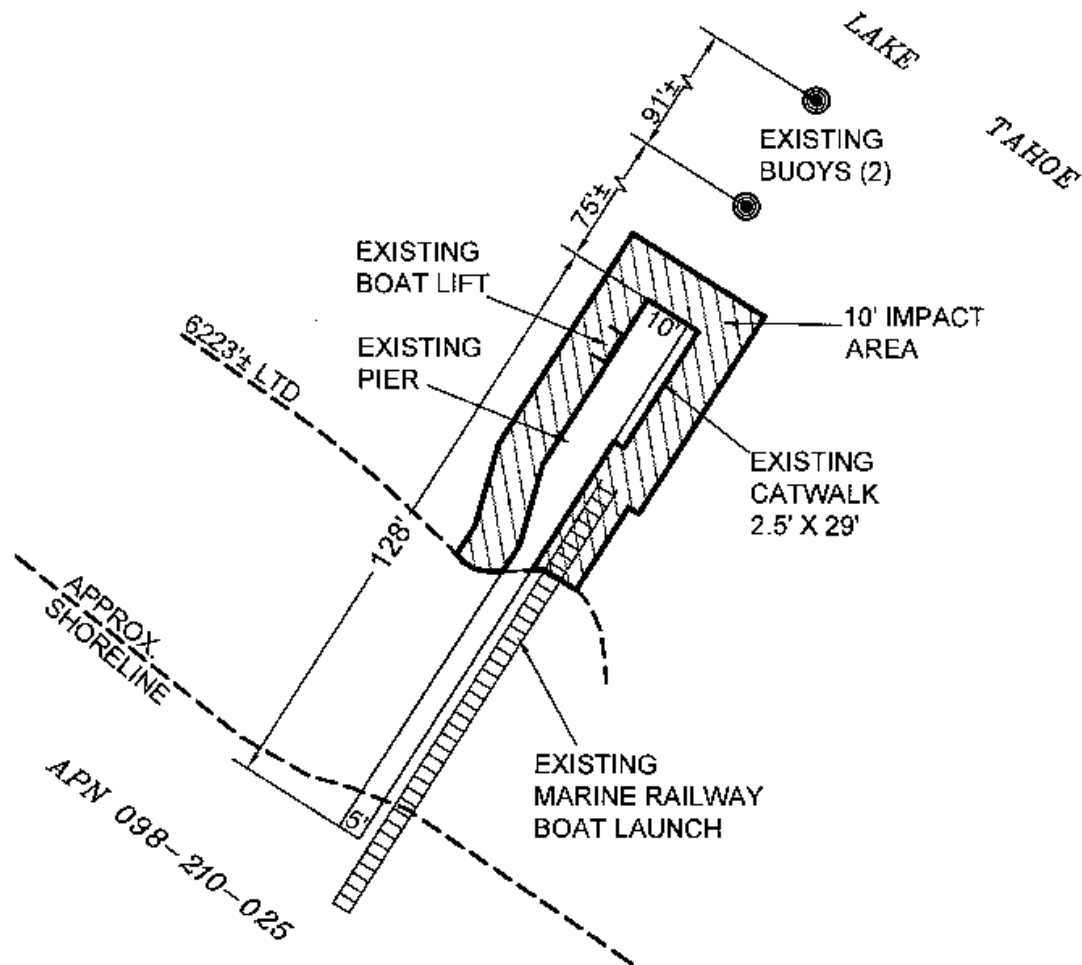
LAND DESCRIPTION PLAT
PRC 4926.9, GRIFFITH
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



6966 WEST LAKE BOULEVARD, TAHOMA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

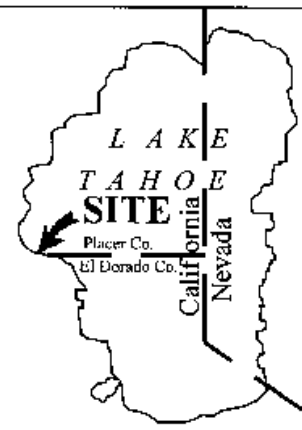
Exhibit B

PRC 4926.9

GRIFFITH

APN 098-210-025

GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



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