

**CALENDAR ITEM
C17**

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08/14/12
PRC 706.1
R. Boggiano

**ACCEPTANCE OF A QUITCLAIM DEED, TERMINATION OF AN AGREEMENT AND
CONSENT TO ENCUMBRANCING OF LEASE, ISSUANCE OF A NEW GENERAL
LEASE - COMMERCIAL USE, APPROVAL OF SUBLEASES AND APPROVAL OF A
NEW AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE**

LESSEE/APPLICANT:

Tahoe Yacht Harbor, LLC, dba Tahoe City Marina

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 700 North Lake Boulevard, near
Tahoe City, Placer County.

AUTHORIZED USE:

Continued operation, use, and maintenance of the Tahoe City Marina, which
includes a public access pier, two breakwaters, two floating wave attenuators,
two fueling and pumpout facilities, 67 boat slips, and a buoy field consisting of 41
mooring buoys and 10 channel marker buoys.

AUTHORIZED ACTIVITIES:

Activities and operations on the lease premises within the marina facilities:

- a. Rental of 67 boat slips
- b. Rental of 41 mooring buoys
- c. Fuel sales
- d. Pump out
- e. Sailing charter
- f. Parasailing operation
- g. Kayak and Paddle Board rentals
- h. Boat rentals

LEASE TERM:

25 years, beginning on the close of escrow of a loan from U.S. Bank National
Association or March 1, 2013, whichever occurs sooner.

CALENDAR ITEM NO. **C17** (CONT'D)

CONSIDERATION:

Minimum annual rent in the amount of \$35,750 per year, against five percent of the gross annual income derived from all authorized commercial activities from the berthing, docking, and mooring of boats; \$0.015 per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and \$0.02 per gallon thereafter; and 50 percent of gross income derived from all other unauthorized activities conducted on or over the Lease Premises; 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 of no less than \$3,000,000

Surety:

Surety bond or other security in the amount of \$75,000

Other:

Lessee agrees to the implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and "Best Management Practices for Guest Dock Users and Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories. Applicant shall post the "BMPs for Marina Owners/Operators" and "BMPs for Guest Dock Users and Boaters" in prominent places within the lease premises. The Lessee shall provide the Commission, on the first anniversary of the lease and tri-annually thereafter, a report on compliance with all BMPs.

OTHER PERTINENT INFORMATION:

1. Lessee owns the upland adjoining the lease premises.
2. On July 1, 1980, the Commission authorized the issuance of a 40-year lease with one nine-year renewal to K & C Marine. The Commission authorized an assignment and amendment of Lease No. PRC 706.1 on October 28, 1996, which arose from a bankruptcy action of K & C Marine. The lease was assigned to the new owner, Tahoe Yacht Harbor, LLC. At that time, the lease was bifurcated and a separate General Lease – Commercial Use, Lease No. PRC 7920.1, was issued to Tahoe Boat Company Owners Association (Association). The Association's leasehold includes 88 slips, sheetpile crib breakwater and a boathouse, and is located adjacent to and within a portion of the Tahoe City Marina. The remaining marina facilities in Tahoe City Marina include a pier, 41 mooring buoys, 10 channel marker buoys, and a fueling station under the subject Lease No. PRC 706.1.

CALENDAR ITEM NO. **C17** (CONT'D)

3. On April 26, 2005, the Commission authorized an Agreement and Consent to Encumbrancing of Lease between the Commission, Tahoe Yacht Harbor, LLC, and U.S. Bank National Association (U.S. Bank). At that time, U.S. Bank provided refinancing in the amount of \$7,000,000 for a loan covering all the marina facilities which included upland marine sales and repairs, retail and restaurant, and berthing facilities. Under the terms of the refinance, Tahoe Yacht Harbor, LLC was required to pledge their interest in Lease No. PRC 706.1 as additional security. That loan matures on March 1, 2015, and currently has a balance of approximately \$4,300,000.

4. On March 25, 2008, the Commission authorized an amendment of the lease for the expansion of the Tahoe City Marina consisting of new expanded pier, fueling and pumpout stations, two breakwaters, two wave attenuators, and new boat slips located on State land in Lake Tahoe. Now that the expansion project is complete, Tahoe Yacht Harbor, LLC, is in the process of obtaining new long-term financing with U.S. Bank, which consists of consolidating the balance of the 2005 refinance loan with the outstanding construction loan, for a total encumbrance of the marina properties in an amount not to exceed \$13,764,352. Under the terms of the new loan, U.S. Bank is again requiring Tahoe Yacht Harbor LLC, to pledge their interest in the lease as additional security. The 10-year maximum term of the new loan would extend beyond the expiration of the existing lease; therefore, Tahoe Yacht Harbor, LLC is now applying to: [1) terminate the existing lease; 2) terminate the existing Agreement and Consent to Encumbrancing of Lease; request a new longer-term lease; and 4) approve a new Agreement and Consent to Encumbrancing of Lease]. Staff recommends acceptance of a lease quitclaim deed and termination of the existing encumbrancing agreement, which relinquishes any right, title, or interest in the lease premises. Staff also recommends issuance of a new lease and execution of a new encumbrancing agreement between the parties.

5. In addition, Tahoe Yacht Harbor, LLC, has requested approval of two long term subleases of individual berths licensed to Tahoe Sailing Charters, LLC., a sailing charter operation, and North Tahoe Water Sports, Inc., a parasailing operation, for a term beginning May 1, 2012, and terminating on October 31, 2020. Staff has reviewed the licensing agreements and recommends approval of the subleases.

6. **Acceptance of Lease Quitclaim Deed:** The staff recommends that the Commission find that the subject acceptance of the lease quitclaim deed does not have a potential for resulting in either a direct or a reasonably

CALENDAR ITEM NO. C17 (CONT'D)

foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

7. **Termination of Present Agreement and Consent to Encumbrancing of Lease:** The staff recommends that the Commission find that the subject termination of agreement and consent to encumbrancing of lease does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

8. **New Lease:** 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. For the existing facilities, 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.

9. **Subleases:** The staff recommends that the Commission find that the subject approval of subleases does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

10. **New Agreement and Consent to Encumbrancing of Lease:** The staff recommends that the Commission find that the subject agreement and consent to encumbrancing of lease does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the (CEQA).

CALENDAR ITEM NO. **C17** (CONT'D)

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

11. 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:

Acceptance of Lease Quitclaim Deed: Find that the subject acceptance of the lease quitclaim deed is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c) (3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Termination of Present Agreement and Consent to Encumbrancing of Lease: Find that the subject termination of agreement and consent to encumbrancing of lease is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c) (3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of a New Lease: 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).

Subleases: Find that the subject approval of subleases is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c) (3), because the subject activity is

CALENDAR ITEM NO. **C17** (CONT'D)

not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

New Agreement and Consent to Encumbrancing of Lease: Find that the subject agreement and consent to encumbrancing of lease is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c) (3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

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 a quitclaim deed for Lease No. PRC 706.1, a General Lease – Commercial Use, effective on the close of escrow of a new loan from U.S. Bank National Association, but no later than March 1, 2013.
2. Authorize the termination of the Agreement and Consent to Encumbrancing of Lease authorized by the Commission on April 26, 2005, between the State Lands Commission, Tahoe Yacht Harbor, LLC (Lessees), and U.S. Bank National Association, effective on the close escrow of a new loan from U.S. Bank National Association or March 1, 2013, whichever occurs sooner.
3. Authorize issuance of a General Lease – Commercial Use to Tahoe Yacht Harbor, LLC, for a term of 25 years, beginning on the close of escrow of a loan from U.S. Bank National Association or March 1, 2013, whichever occurs sooner, for the continued use, maintenance, and operation of an existing commercial marina, known as Tahoe City Marina, consisting of a public access pier, two breakwaters, two wave attenuators, two fueling and pumpout facilities, 67 boat slips, and a buoy field consisting of 41 mooring buoys and 10 marker buoys, as described on Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; minimum annual rent in the amount of \$35,750 per year, against five percent of the gross annual income derived from the berthing and mooring of boats; \$0.015 per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and \$0.02 per gallon

CALENDAR ITEM NO. **C17** (CONT'D)

thereafter; and 50 percent of gross income derived from all other unauthorized activities conducted on or over the Lease Premises; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; liability insurance in the amount of no less than \$3,000,000; and surety in the amount of \$75,000.

4. Authorize two subleases: a sublease between Tahoe Yacht Harbor, LLC, dba Tahoe City Marina, and Tahoe Sailing Charters, LLC, for a term of three seasons, beginning May 1, 2012 and terminating on October 31, 2020, for the use of a berth for a commercial sailing charter operation; and a sublease between Tahoe Yacht Harbor LLC, dba Tahoe City Marina, and North Tahoe Water Sports, Inc. beginning May 1, 2012 and terminating on October 31, 2020, for the use of a berth for a commercial parasailing operation.
5. Authorize execution of the document entitled "Agreement and Consent to Encumbrancing of Lease", in the amount not to exceed \$13,764,352, on file in the office of the Commission, between the State Lands Commission, Tahoe Yacht Harbor, LLC, and U.S. Bank National Association, effective on the close of escrow of a new loan from U.S. Bank National Association or March 1, 2013, whichever occurs sooner.

EXHIBIT A

PRC 706.1

LAND DESCRIPTION

That portion of submerged land in the bed of Lake Tahoe situate adjacent to fractional Section 6, Township 15 North, Range 17 East, M.D.M., as shown on Official Government Plat approved November 9, 1866, in the County of Placer, State of California, described as follows:

COMMENCING at the most westerly corner of Parcel B as shown on Parcel Map 72165 recorded in Book 11 of Parcel Maps, Page 124, Official Records of said County; thence along the westerly boundary of said parcel S 45°48'00" E 259.86 feet to the Lake Tahoe meander line as shown on said Parcel Map and the POINT OF BEGINNING; thence S 81°26'30" W 8.80 feet; thence S 44°20'37" E 1149.70 feet; thence N 45°39'23" E 748.86 feet; thence N 51°23'11" W 793.45 feet to the most easterly corner of that parcel described in Section 3 of Lease PRC 7920.1, dated March 25, 1997, on file at the California State Lands Commission; thence along said Lease Parcel the following five (5) courses:

- 1) S 45°32'45" W 176.00 feet;
- 2) S 21°32'45" W 49.00 feet;
- 3) S 78°32'45" W 76.00 feet;
- 4) S 44°32'45" W 124.00 feet;
- 5) N 45°27'15" W 98.64 feet;

thence leaving said Lease Parcel N 44°28'33" E 37.70 feet; thence N 44°27'15" W 16.66 feet to the southwesterly line of said Lease Parcel; thence continuing along said Lease Parcel N 44°27'15" W 129.91 feet to the Lake Tahoe Meander Line as shown on said Parcel Map; thence leaving said Lease Parcel and continuing along said Meander Line S 50°26'30" W 162.28 feet; thence S 81°26'30" W 135.23 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the 6223' Lake Tahoe Datum elevation.

The Basis of Bearings for this description is the westerly boundary of Parcel B as shown on Parcel Map 72165 recorded in Book 11 of Parcel Maps, Page 124, Official Records of said County.

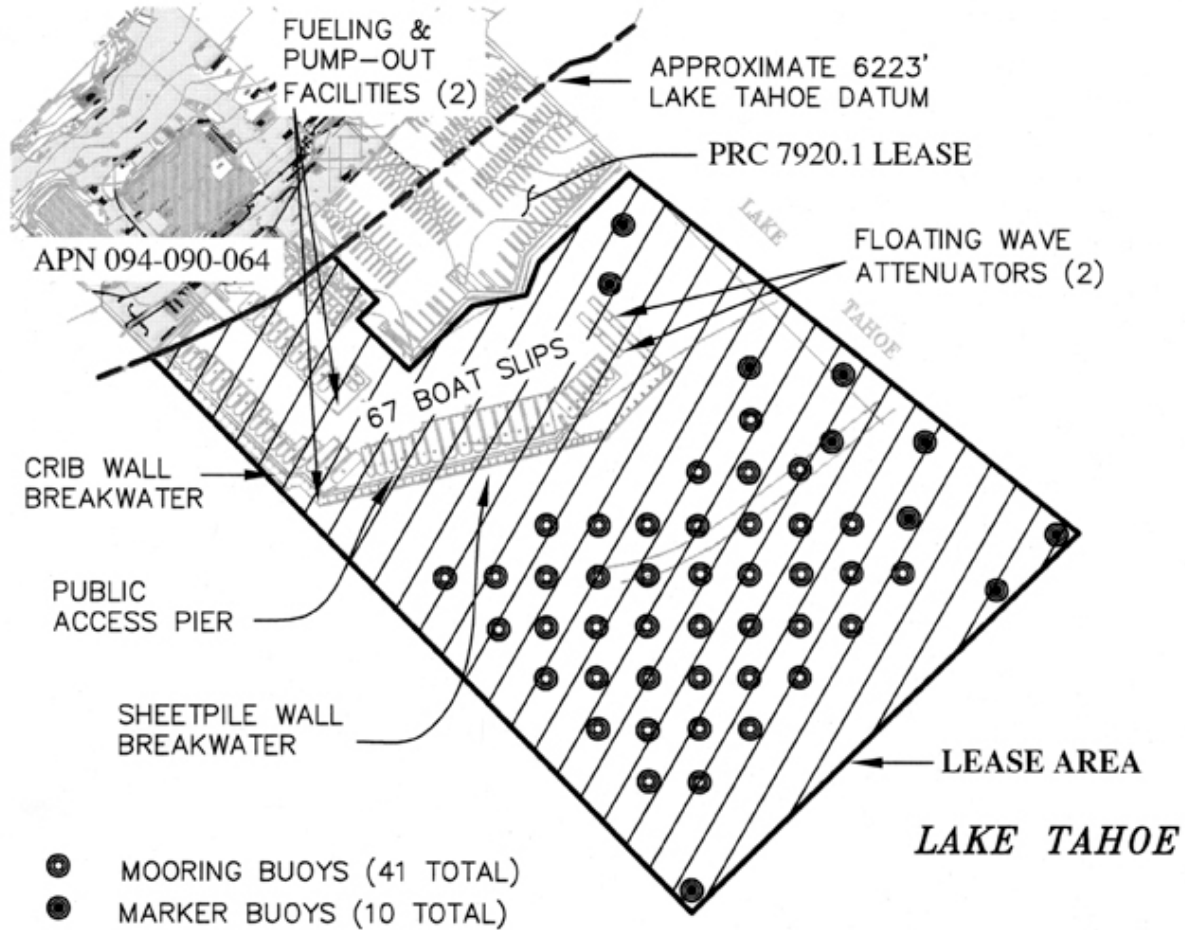
END OF DESCRIPTION

Prepared 7/10/2012 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



700 NORTH LAKE BOULEVARD, TAHOE CITY
PLACER COUNTY

NO SCALE

LOCATION

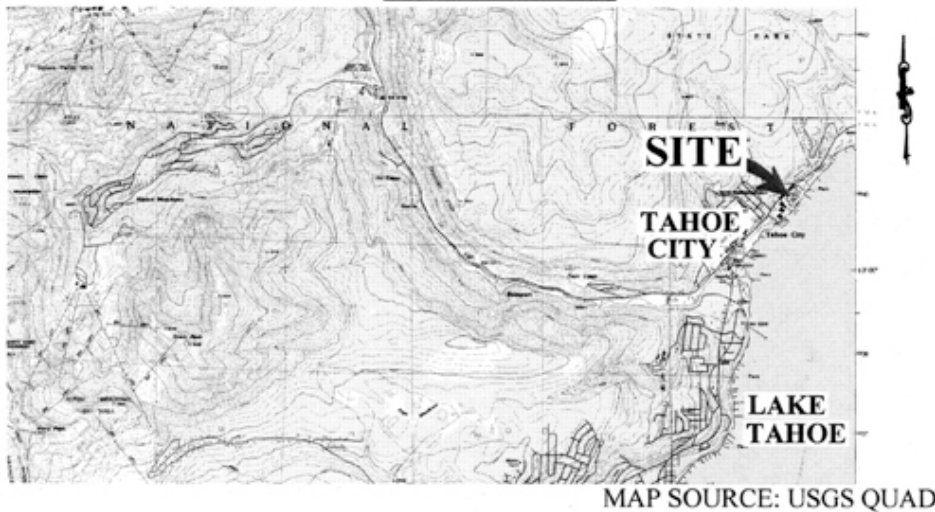


Exhibit B

PRC 706.1
TAHOE YACHT
HARBOR, LLC.
GENERAL LEASE -
COMMERCIAL USE
PLACER COUNTY



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.