

**CALENDAR ITEM
C07**

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02/22/13
PRC 8698.9
R. Barham

**RESCISSION OF APPROVAL OF A RECREATIONAL PIER LEASE AND ISSUANCE
OF A GENERAL LEASE – RECREATIONAL USE**

APPLICANT:

Anne B. Phipps, Trustee, or her successor, of the Richard L. Phipps and Anne B. Phipps Exemption Trust

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3295 West Lake Boulevard, near Tahoe City, Placer County.

AUTHORIZED USE:

Use and maintenance of two existing mooring buoys.

LEASE TERM:

10 years, beginning February 22, 2013

CONSIDERATION:

No monetary consideration pursuant to Public Resources Code section 6503.5.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in the amount of no less than \$1,000,000.

Other:

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 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

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Commission pending resolution of the TRPA FEIS and amended ordinance issues.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On August 24, 2006, the Commission authorized a 10-year Recreational Pier Lease, beginning August 1, 2006, with Richard L. Phipps and Anne B. Phipps, Trustees of the Richard L. and Anne B. Phipps Trust. That lease was never fully executed. After Commission authorization, it came to staff's attention that Mr. Phipps had passed away. On February 14, 2008, the upland was deeded to Anne B. Phipps, Trustee, or her successor, of the Richard L. Phipps and Anne B. Phipps Exemption Trust. Staff is now requesting that the authorization made at its August 24, 2006 meeting be rescinded and that a new General Lease – Recreational Use be issued. The applicant has agreed to the new lease.
3. On October 8, 2011, Chapter 585, Statutes 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 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 was 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.

4. **Rescind Authorization of a Recreational Pier Lease:** The staff recommends that the Commission find that the subject rescission of approval does not have a potential for resulting in either a direct or a

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reasonably 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 Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

5. **Issuance of a General Lease – Recreational Use:** 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).

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

6. 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:

Rescind Authorization of a Recreational Pier Lease: Find that the subject rescission of approval 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 General Lease – Recreational Use: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of

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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 rescission of a Recreational Pier Lease, with an effective date of August 1, 2006, issued to Richard L. Phipps and Anne B. Phipps, Trustees of the Richard L. and Anne B. Phipps Trust.
2. Authorize issuance of a General Lease – Recreational Use to Anne B. Phipps, Trustee, or her successor, of the Richard L. Phipps and Anne B. Phipps Exemption Trust, beginning February 22, 2013, for a term of 10 years, for the use and maintenance of two existing 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 with coverage of no less than \$1,000,000.

EXHIBIT A

PRC 8698.9

LAND DESCRIPTION

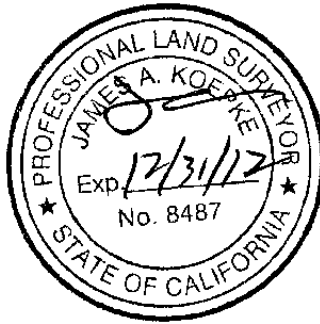
Two (2) parcels of submerged land, situate in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 25, Township 15 North, Range 16 East, MDM, as shown on the Official Township Plat, approved April 11th, 1884, County of Placer, State of California, and more particularly described as follows:

Two (2) circular parcels of land, being 50 feet in diameter, underlying existing buoys, adjacent to that Parcel as described in "Exhibit A" of that Grant Deed recorded February 14th, 2008 as document number DOC-2008-0010728-00 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

PREPARED 11/15/12 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



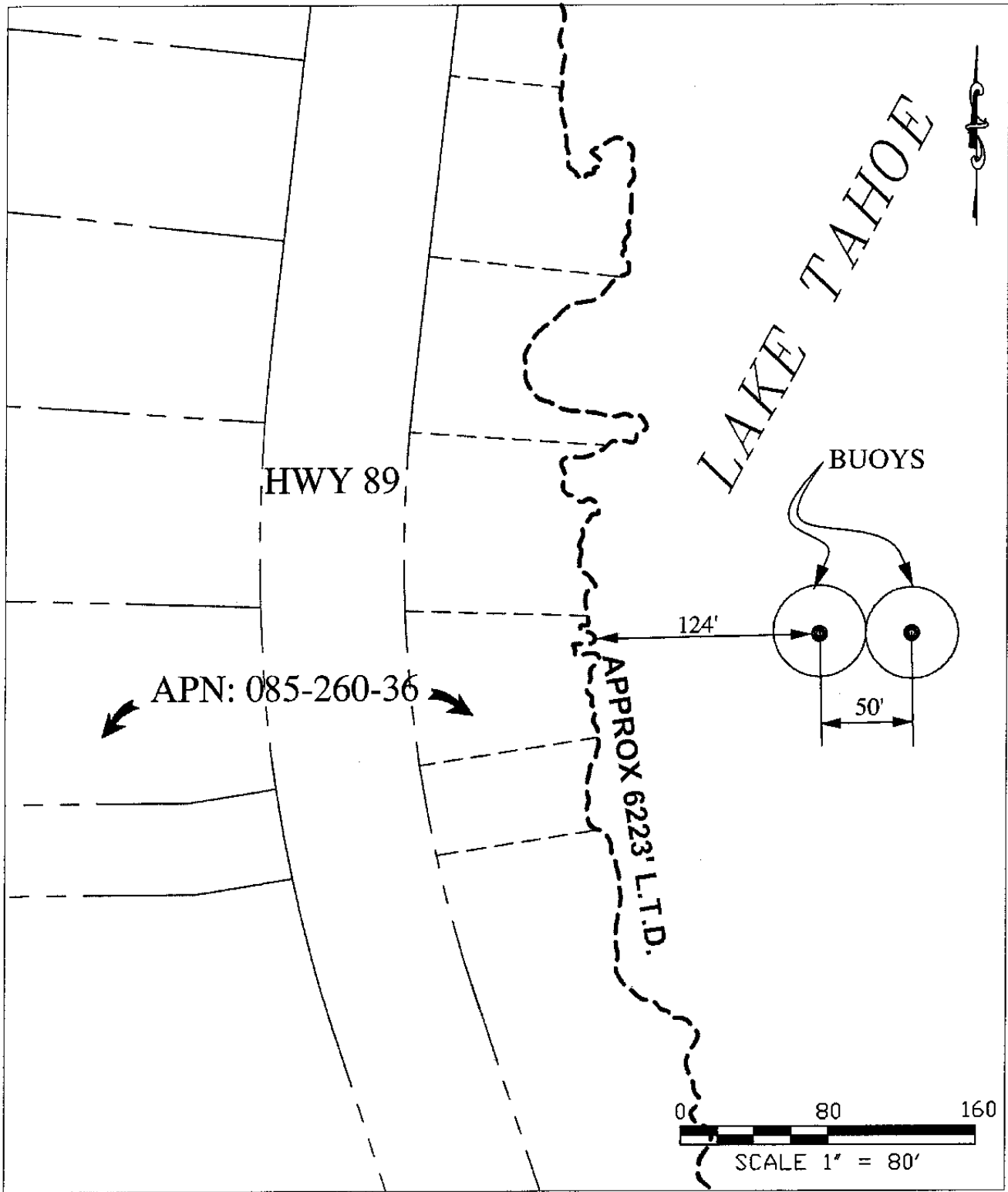


EXHIBIT A

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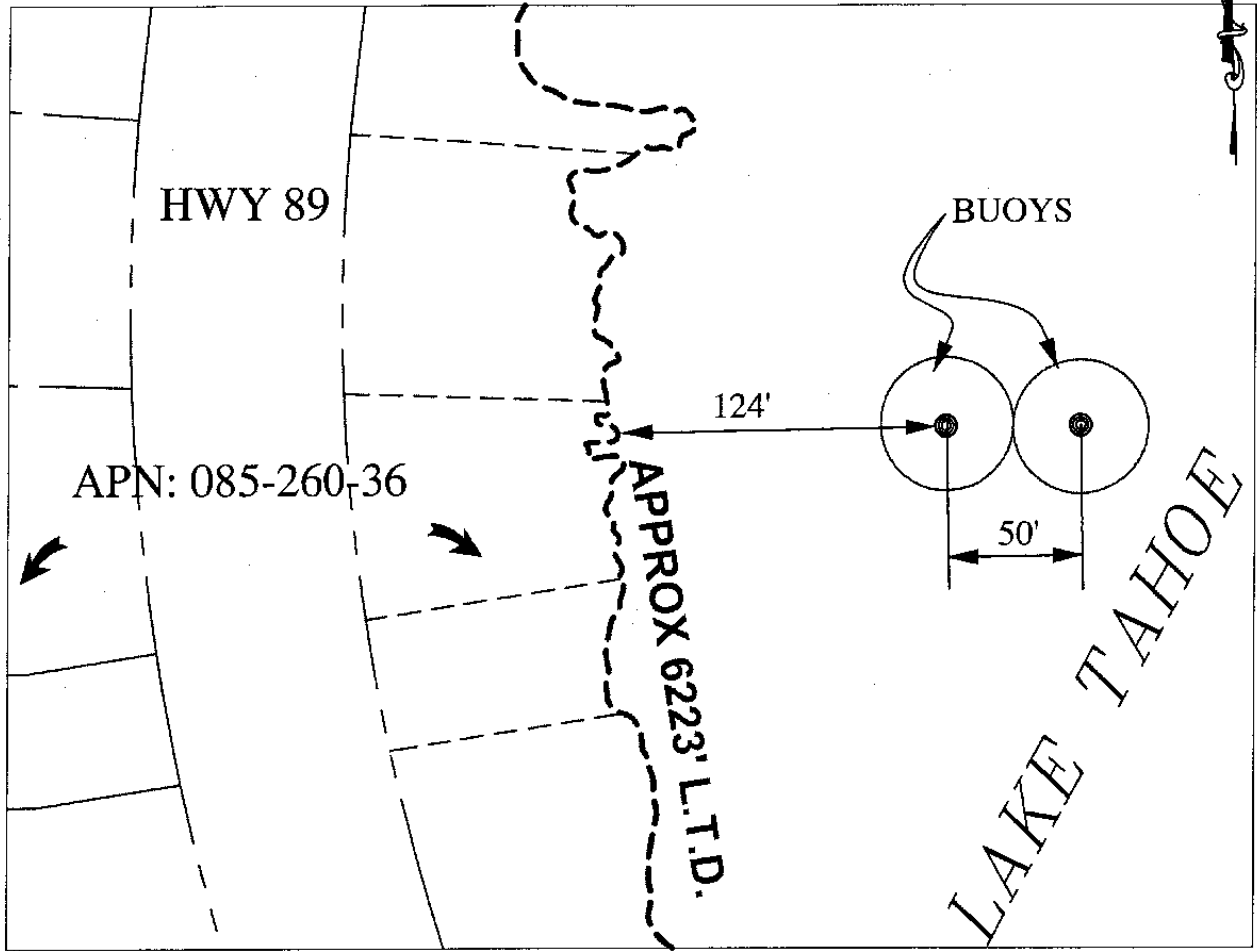
LAND DESCRIPTION PLAT
 PRC 8698.9, PHIPPS
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

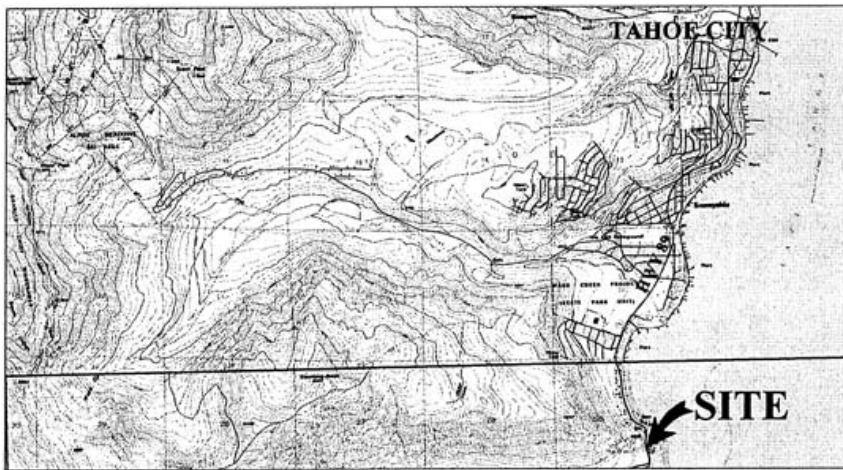
SITE



3295 WEST LAKE BLVD, TAHOE CITY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

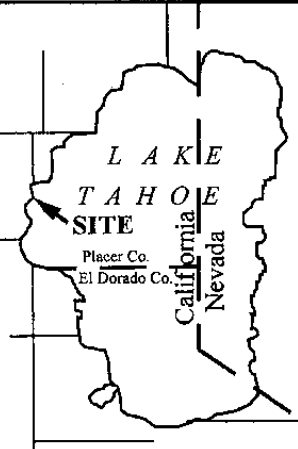
Exhibit B

PRC 8698.9

PHIPPS

APN: 085-260-036

GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



MJF 11/15/12

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.