

CALENDAR ITEM

64

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02/21/14

PRC 3659.1

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B. Terry

RECONSIDER A GENERAL LEASE – RECREATIONAL USE

APPLICANTS:

A. Nathaniel Goldhaber and Marilyn K. Goldhaber, Co-Trustees of the Goldhaber Revocable Trust u/a/d 11/11/2005

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 9818 Lake Street and 77 Speedboat Avenue, near Kings Beach, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boat hoist, boathouse with a boat lift, and two mooring buoys.

LEASE TERM:

10 years, beginning December 1, 2013.

CONSIDERATION:

\$3,104 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 an amount no less than \$1,000,000 per occurrence.

Other:

1. The proposed lease contains a provision requiring the Applicants 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

CALENDAR ITEM NO. 64 (CONT'D)

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. Lessee expressly acknowledges and agrees that issuance of a Lease does not substitute for, or provide preference in, obtaining authorizations from the TRPA or any other regulatory agency for the improvements authorized by the Commission.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland parcel, Assessor's Parcel Number (APN) 090-282-031, and Paula Turteltaub, Trustee of the Paula Turteltaub 2001 Revocable Trust Agreement dated June 13, 2001, owns APN 090-282-030, adjoining the lease premises.
2. On August 17, 2004, the Commission authorized a General Lease – Recreational Use with A. Nathaniel Goldhaber and Marilyn K. Goldhaber; and Paula Turteltaub, Trustee u/t/a dtd. June 13, 2001. That lease expired on November 30, 2011. On January 4, 2008, the ownership of APN 090-282-031, held by A. Nathaniel Goldhaber and Marilyn K. Goldhaber, was transferred to A. Nathaniel Goldhaber and Marilyn K. Goldhaber, Co-Trustees of the Goldhaber Revocable Trust u/a/d/ 11/11/2005.
3. On November 22, 1995, A. Nathaniel and Marilyn Goldhaber and Paula Turteltaub entered into a Multiple Use Pier Agreement, Declaration of Restrictive Covenants, and License Agreement (Agreement). The Agreement authorized the Goldhabers the right to terminate the agreement if Paula Turteltaub failed to comply with the terms. Paula Turteltaub was found to be in breach of the agreement and the Goldhabers filed a Revocation of License with Placer County, which was recorded on June 7, 2013, removing Paula Turteltaub from the Multiple Use Pier Agreement, Declaration of Restrictive Covenants, and License Agreement. The Applicants are now applying for a General Lease – Recreational Use.
4. On December 2, 2013, the Commission authorized a General Lease – Recreational Use with the Applicants. In addition, the Commission

CALENDAR ITEM NO. 64 (CONT'D)

authorized acceptance of additional hold-over rent in the amount of \$101 for the period from December 1, 2011, through November 30, 2013.

5. At the time of processing the lease application, it was staff's understanding, based on representations made by the Applicant's agent, that the Applicants agreed with the terms of the new lease. However, after the Commission's approval of the lease, staff became aware that the Applicants objected to the provision regarding restoration of the lease premises in Section 3, Paragraph 13. The Applicants have advised they will not execute the lease documents because of concerns with the "restoration of lease premises" terms in the lease. The Applicants have requested that the Commission reconsider their lease application so that the Applicants had the opportunity to present their concerns to the Commission.
6. In addition, the annual rent calculated in the prior authorization was based on a ten-foot impact area. Staff has recalculated the annual rent based on a nine-foot impact area in locations around the pier used for the mooring and docking of boats.
7. Staff is recommending that the authorization made by the Commission at its December 2, 2013, meeting be rescinded and that a General Lease – Recreational Use be issued with an annual rent in the amount of \$3,104, based on the updated nine-foot impact area.
8. **Rescind Approval of Lease:** The staff recommends that the Commission find that the subject lease rescission 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 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.

9. **Issuance of a Lease:** The Staff recommends that the Commission find that this activity is exempt from the requirements of the 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).

CALENDAR ITEM NO. 64 (CONT'D)

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

10. 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 Approval of Lease: Find that the subject lease rescission 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 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).

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.

CALENDAR ITEM NO. 64 (CONT'D)

AUTHORIZATION:

1. Authorize rescission of the Commission's approval of Lease No. PRC 3659.1, a General Lease – Recreational Use, approved at the December 2, 2013, meeting, issued to A. Nathaniel Goldhaber and Marilyn K. Goldhaber, Co-Trustees of the Goldhaber Revocable Trust u/a/d 11/11/2005.
2. Authorize acceptance of additional hold-over rent in the amount of \$101 for the period of December 1, 2011, through November 30, 2013.
3. Authorize issuance of a General Lease – Recreational Use to A. Nathaniel Goldhaber and Marilyn K. Goldhaber, Co-Trustees of the Goldhaber Revocable Trust u/a/d 11/11/2005, beginning December 1, 2013, for a term of 10 years, for the continued use and maintenance of an existing pier, boat hoist, boathouse with a boat lift, 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; annual rent in the amount of \$3,104 with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3659.1

LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 fractional Section 30, Township 16 North, Range 18 East, MDM., as shown on Official Government Township Plat approved January 29, 1875, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, boat lift, and boat hoist lying adjacent to that Parcel as described in Exhibit "A" of that Grant Deed recorded January 04, 2008 as Document Number 2008-000572-00 and that Parcel as described in Exhibit A of that Grant Deed recorded April 12, 2007 as Document Number 2007-0036999-00 in Official Records of said County.

ALSO TOGETHER WITH any applicable impact area(s).

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

PARCEL 2 & 3 – BUOYS (2)

Two (2) circular parcels of land, being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to that Parcel as described in Exhibit "A" of that Grant Deed recorded January 04, 2008 as Document Number 2008-000572-00 and that Parcel as described in Exhibit A of that Grant Deed recorded April 12, 2007 as Document Number 2007-0036999-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared February 10, 2014 by
the California State Lands Commission Boundary Unit.



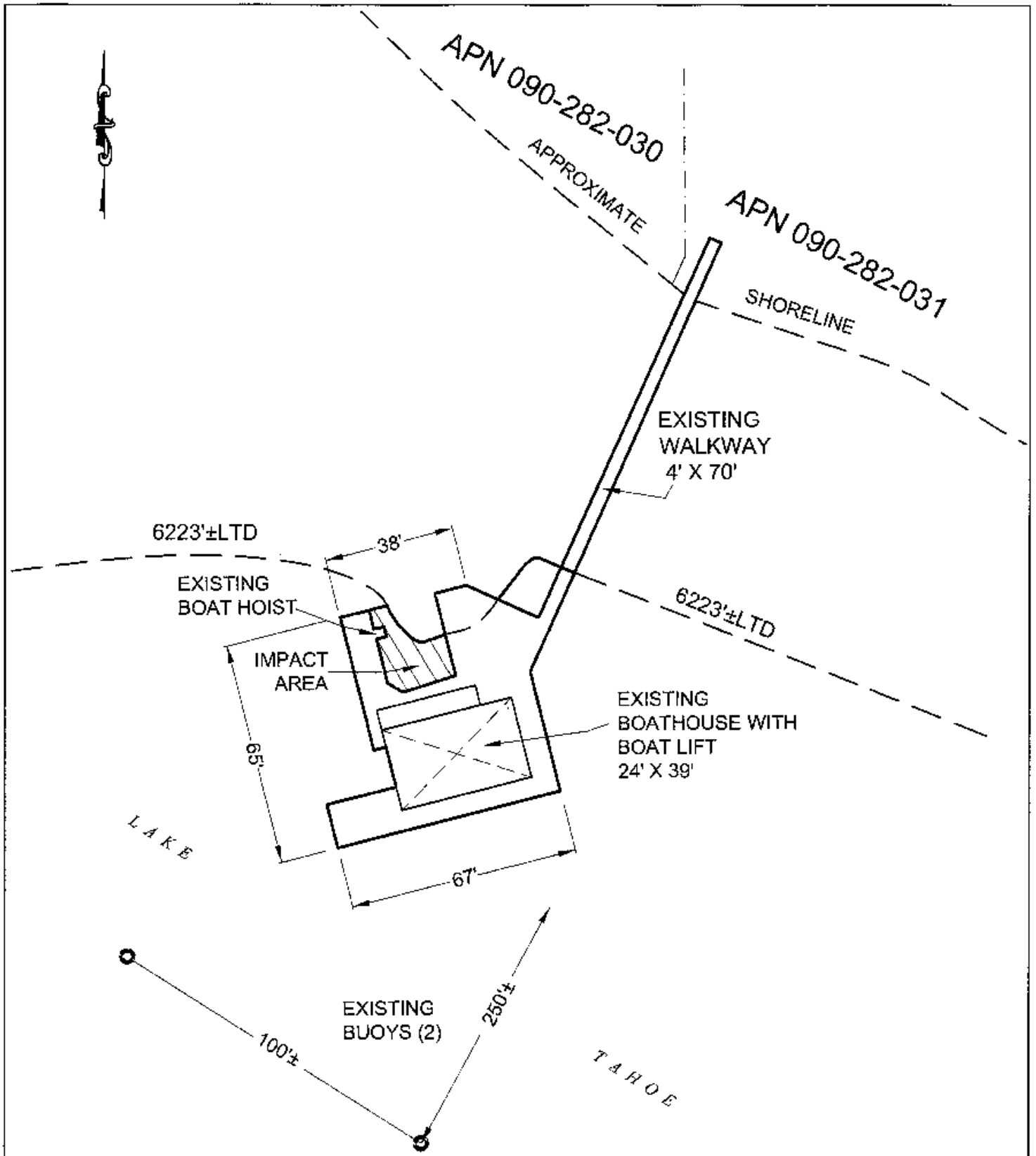
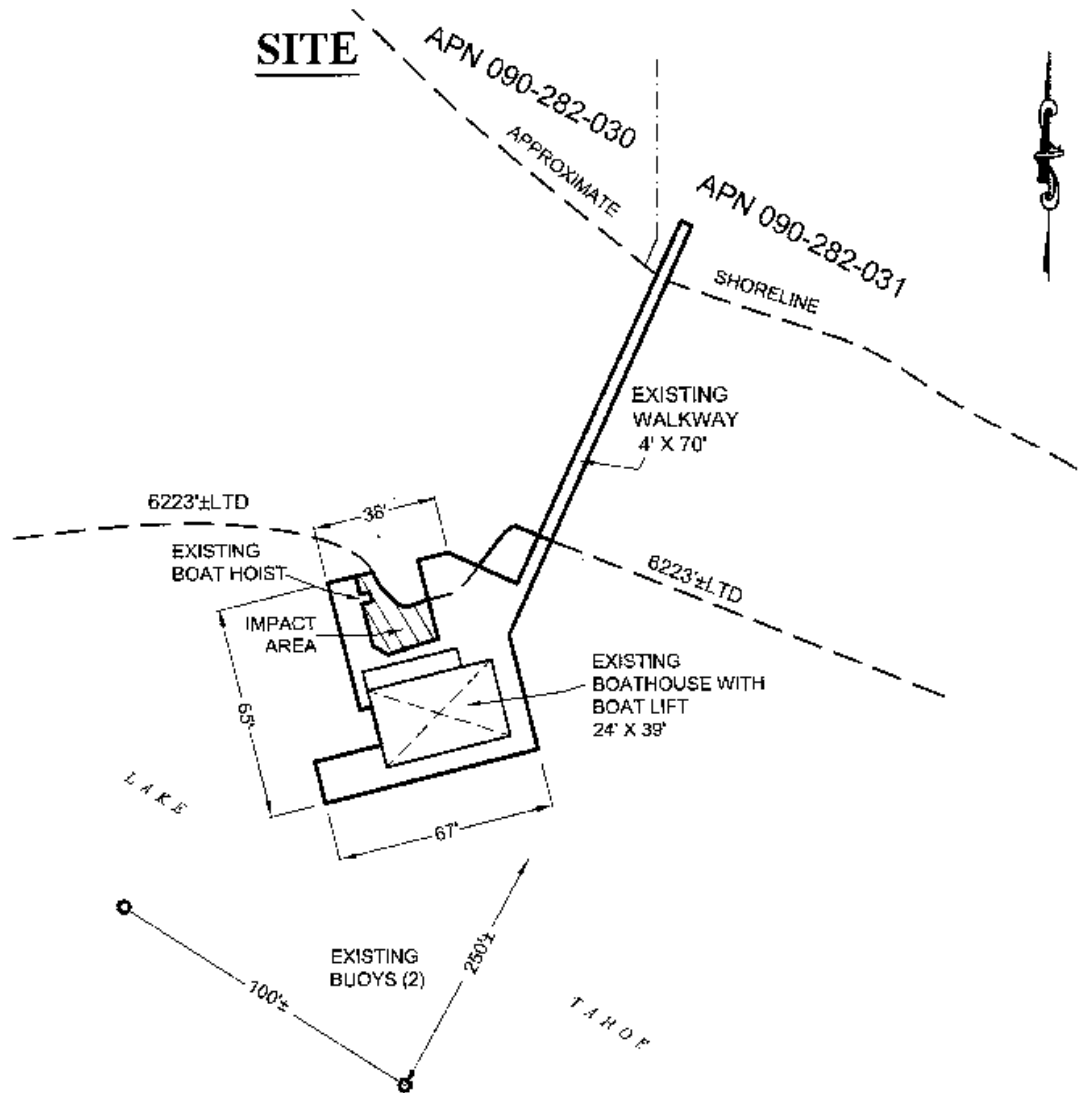


EXHIBIT A



NO SCALE

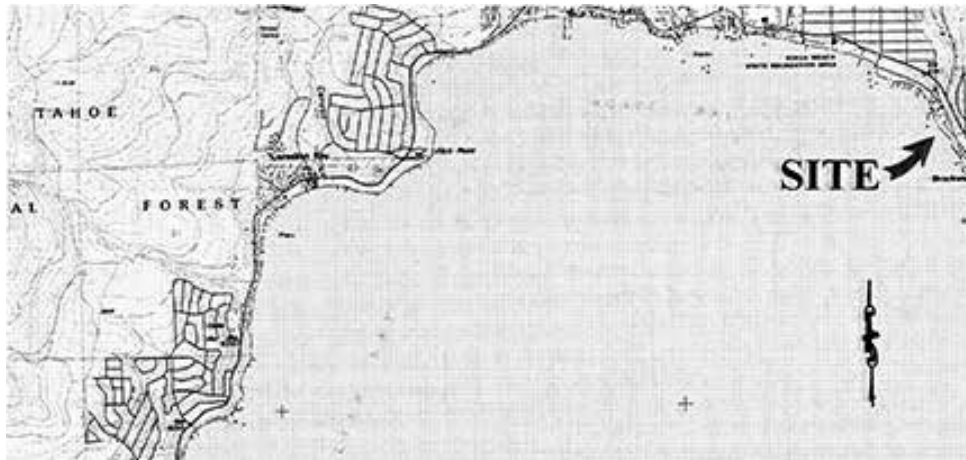
SITE



9818 LAKE STREET & 77 SPEEDBOAT AVENUE, NEAR KINGS BEACH

NO SCALE

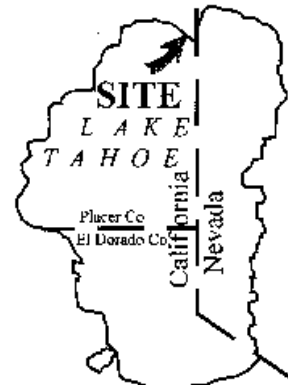
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3659.1
 GOLDHABER
 APN 090-282-030, 031
 GENERAL LEASE-
 RECREATIONAL USE
 PLACER COUNTY



MJD 10/30/2013

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.