

**CALENDAR ITEM  
C15**

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S 1

04/23/14  
PRC 7920.1  
N. Lee

**ACCEPTANCE OF BACK RENT AND  
WAIVER OF PENALTY AND INTEREST**

**LESSEE:**

Tahoe Boat Company Owners Association  
P.O. Box 330  
Tahoe City, CA 96145

**AREA, LAND TYPE, AND LOCATION:**

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

**AUTHORIZED USE:**

Commercial marina operation, which includes 88 boat slips, docks, sheet pile crib walls, and a boathouse.

**LEASE TERM:**

Beginning October 28, 1996, and ending June 30, 2020, with an option to renew the lease for a period not to exceed nine years.

**CONSIDERATION:**

Annual rent of five percent of the fair market rental value for the boat slips plus five percent of the gross income derived from all other activities, including subleasing, on the Lease Premises; with a current minimum annual rent of \$7,040 adjusted annually based on the prior year's rent and the Consumer Price Index; and 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.

Surety:

Surety bond or other security in the amount of \$10,000.

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**OTHER PERTINENT INFORMATION:**

1. Lessee has the right to use the upland adjoining the lease premises.
2. On October 28, 1996, the Commission authorized a General Lease – Commercial Use to Tahoe Boat Company Owners Association (Association) for the operation of a commercial marina. The lease will expire on June 30, 2020.
3. The Association's lease requires a minimum annual rent payment calculated as 90% of the prior year's rental on all activities on the Lease Premises, but no less than \$5,700, which is the minimum annual rent for the initial lease year. The current minimum annual rent is \$7,040. Minimum annual rent is due and payable on October 28 of each lease year. Any rent due in excess of the minimum annual rent is due and payable by December 31 of each year and must be accompanied by reports of annual gross income and income statements. The Association has been making annual payments based on their understanding of the lease. However, upon recent review of the annual reports of gross income, Commission staff determined that the Association had not correctly paid rent or reported gross income in accordance with the lease provisions.
4. As background, staff and the Association have had difficulty in interpreting the lease provisions and how to pay rent since the lease was first issued in 1996. The unique nature of this marina required use of a complex formula to establish the fair market rent, as each slip is owned in the nature of a condominium rather than leased as in typical marinas. The application of the rent formula and the allocation of subleasing revenue was difficult to determine and unclear to both sides. Staff met with Association representatives to review the lease provisions and discuss application of the rent formula and allocation of subleasing revenue.
5. Staff and Association representatives worked together to clarify the rent formula as applied to the Lease Premises, and determine how to apply subleasing revenue and the Association's membership dues. The Association calculated \$22,449.17 as the total amount of past due rent. Staff has reviewed the lease terms and income statements provided and agrees with this amount. Furthermore, all parties are now clear about how rent is to be reported and calculated going forward.

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6. The amount of \$22,449.17 does not include the five percent penalty and 18 percent annual interest provided in the lease and California Code of Regulations, Title 2, section 1911, subdivision (b) (Cal. Code Regs., tit. 2, § 1911, subd. (b)). The complex rent calculations, unclear allocation of certain incomes, and unique character of this lease resulted in genuine confusion on the part of both staff and the Association. The Association is requesting the Commission waive penalty and interest. Staff is recommending the waiver of the penalty and interest as a negotiated settlement to the back rent issue. The Commission may waive penalty and interest under California Code of Regulations, Title 2, section 1911, subdivision (b) (Cal. Code Regs., tit. 2, § 1911, subd. (c)). Accordingly, staff recommends accepting the Association's offer of a back rent payment in the amount of \$22,449.17 and waiver of all penalty and interest that has accrued.
  
7. The staff recommends that the Commission find that the subject acceptance of back rent and waiver of penalty and interest 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.

**EXHIBIT:**

- A. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the subject acceptance of back rent and waiver of penalty and interest 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.

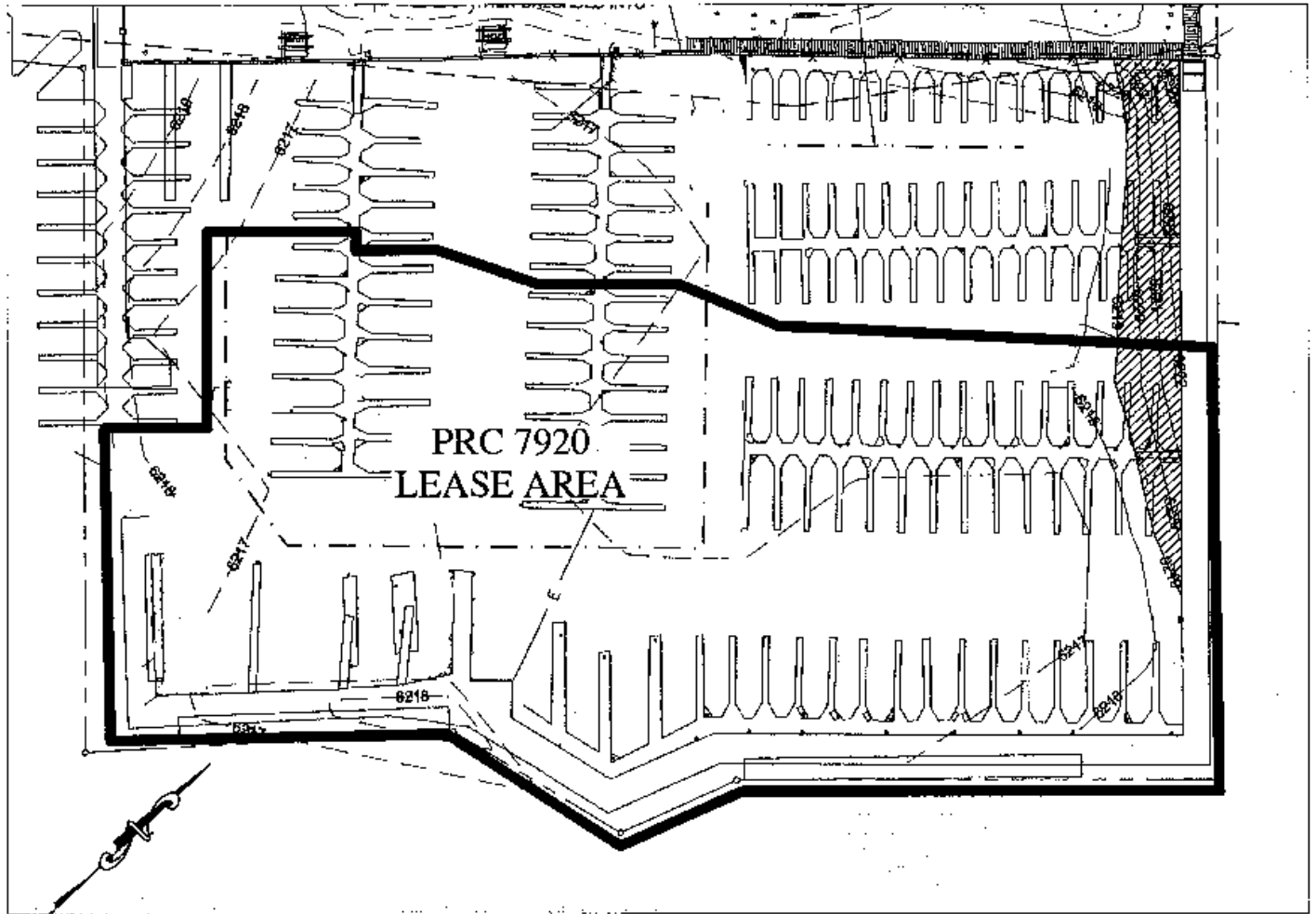
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**AUTHORIZATION:**

Authorize acceptance of back rent in the amount of \$22,449.17 for the period of October 28, 2009 through October 27, 2013, and waive accrued penalty and interest.

NO SCALE

# SITE



700 North Lake Blvd., Tahoe City - APN 094-090-032

NO SCALE

# LOCATION

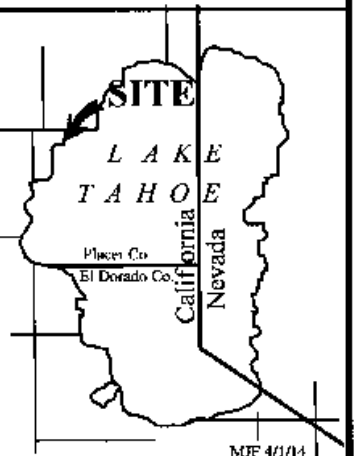


MAP SOURCE: USGS QUAD

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 A

PRC 7920.1  
TAHOE BOAT COMPANY  
OWNERS ASSOCIATION  
GENERAL LEASE -  
COMMERCIAL USE  
PLACER COUNTY



MF 4/1/14