

**CALENDAR ITEM
C23**

A 1
S 1

06/19/14
PRC 4884.1
N. Lee

**RESCISSION OF APPROVAL AND ISSUANCE OF A
GENERAL LEASE - RECREATIONAL USE**

APPLICANTS:

Keith Schuler, Chelle Schuler, James Gordon Oliver, and Patricia J. Oliver

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6140 and 6150 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing joint-use pier, boathouse, and four mooring buoys previously authorized by the Commission; and use and maintenance of an existing sundeck with stairs not previously authorized by the Commission.

LEASE TERM:

10 years, beginning February 28, 2009.

CONSIDERATION:

Sundeck with Stairs: \$659 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

Joint-Use Pier, Boathouse, and Four Mooring Buoys: 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 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

CALENDAR ITEM NO. **C23** (CONT'D)

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

2. Lessee expressly acknowledges and agrees that issuance of this lease does not substitute for, or provide preference in, obtaining authorizations from the TRPA or any other regulatory agency for the improvements authorized in this lease.
3. The lease contains provisions that the existing sundeck and stairs, as shown on the attached Exhibit B, may not be expanded or improved, and if repairs to any portion of the existing sundeck or stairs cost more than 50 percent of the base value of the sundeck and stairs, then the sundeck and stairs must be removed from the lease premises.

OTHER PERTINENT INFORMATION:

1. Applicants own the two upland properties adjoining the lease premises.
2. Use of the pier is shared by the owners of the two adjoining upland properties. Each upland property also has two mooring buoys.
3. On September 3, 1999, the Commission authorized a Recreational Pier Lease with Elizabeth J. Philipp, Nancy P. Marotte, Adelaide M. Philipp, James Gordon Oliver, and Patricia J. Oliver for an existing joint-use pier, boathouse, and four mooring buoys. That lease expired on February 27, 2009.
4. On March 4, 2005, ownership of one of the upland properties transferred from Elizabeth J. Philipp, Nancy P. Marotte, and Adelaide M. Philipp to Keith Schuler and Chelle Schuler.
5. On February 9, 2006, the Commission authorized a rent-free Recreational Pier Lease with Keith Schuler, Chelle Schuler, James Gordon Oliver, and Patricia J. Oliver. After the Commission's approval of the lease, staff

CALENDAR ITEM NO. **C23** (CONT'D)

became aware that the prior lease had not been formally terminated and that a sundeck with stairs existed above the boathouse. The sundeck with stairs has existed within the lease premises for many years but was never previously authorized by the Commission. Because of the issues, the lease was never signed.

6. Staff has worked with the applicants and they have agreed to the rescission of the prior authorization and the issuance of a new General Lease – Recreational Use for the joint-use pier, boathouse, four mooring buoys, and sundeck with stairs beginning February 28, 2009, the end of the prior lease. Applicant has already come current with rent.
7. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law is effective 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. Therefore, only the sundeck with stairs is subject to rent.

5. **Rescind Approval of Lease:** The staff recommends that the Commission find that the subject rescission of lease approval 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).

CALENDAR ITEM NO. **C23** (CONT'D)

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

6. **Issuance of New Lease:** 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.

7. 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 rescission of lease 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 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).

CALENDAR ITEM NO. **C23** (CONT'D)

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 the Commission's approval of Lease No. PRC 4884.9, a Recreational Pier Lease, at the February 9, 2006, meeting.

2. Authorize issuance of a General Lease – Recreational Use to Keith Schuler, Chelle Schuler, James Gordon Oliver, and Patricia J. Oliver beginning February 28, 2009, for a term of 10 years, for the continued use and maintenance of an existing joint-use pier, boathouse, and four mooring buoys previously authorized by the Commission and use and maintenance of an existing sundeck with stairs not previously authorized by the Commission as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the joint-use pier, boathouse, and four mooring buoys: no monetary consideration pursuant to Public Resources Code section 6503.5; consideration for the sundeck with stairs: annual rent in the amount of \$659, 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 4884.1

LAND DESCRIPTION

Five (5) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 fractional Section 7, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – JOINT-USE PIER

All those lands underlying an existing joint-use pier, boathouse, sundeck, stairs and two catwalks lying adjacent to those Lots as described in that Grant Deed recorded March 4, 2005 as Document Number 2005-0026561 and to those Lots as described in that Grant Deed recorded February 28, 1995 as Document Number 95-009879 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.

PARCELS 2, 3, 4 & 5 – BUOYS (4)

Four (4) circular parcels of land, being 50 feet in diameter, underlying four (4) existing buoys lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared February 26, 2014 by
The California State Lands Commission Boundary Unit.



L A K E

T A H O E

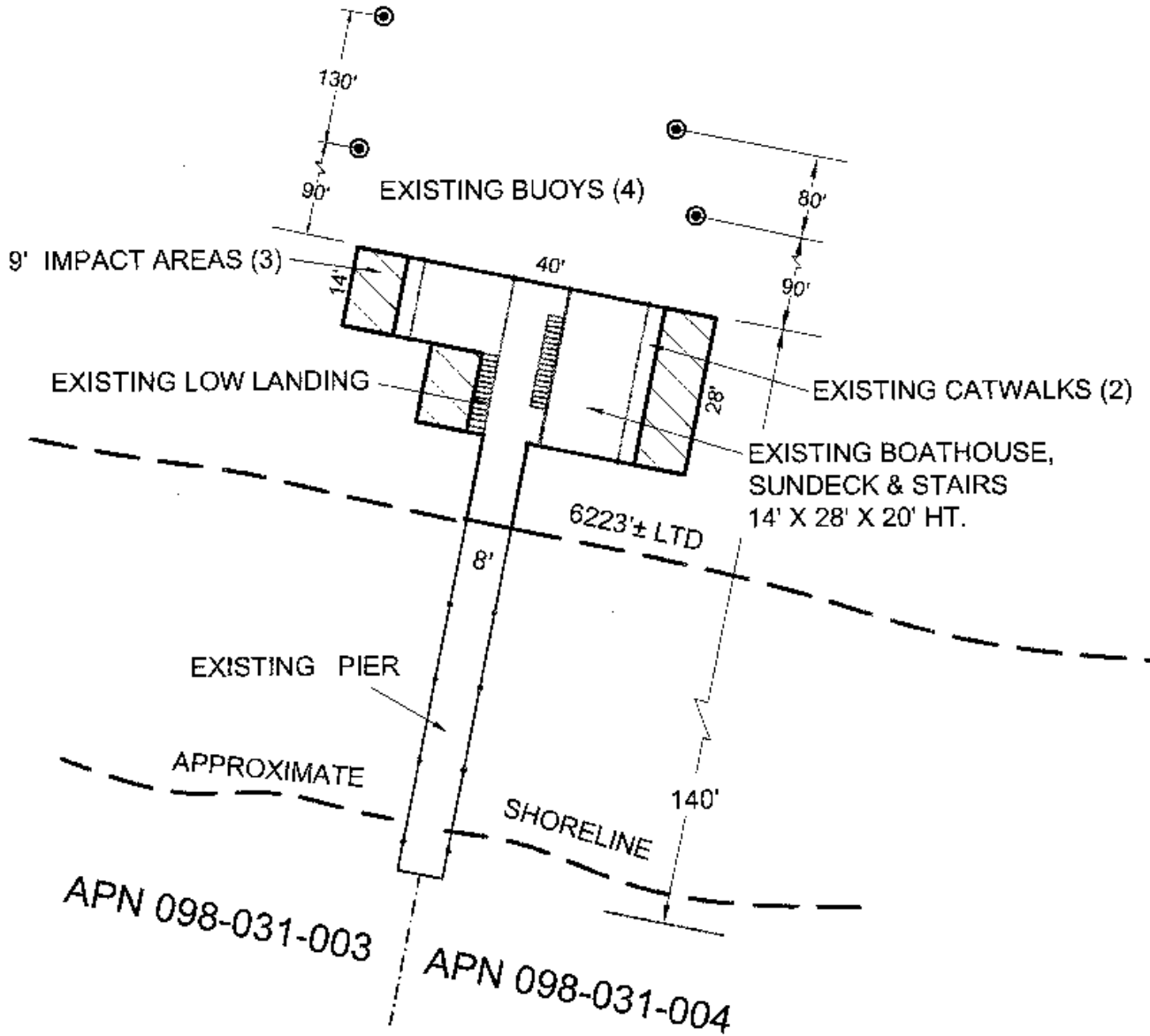


EXHIBIT A

Page 2 of 2

MJJ 02/20/14

LAND DESCRIPTION PLAT
 PRC 4884.1, SCHULER / OLIVER
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION

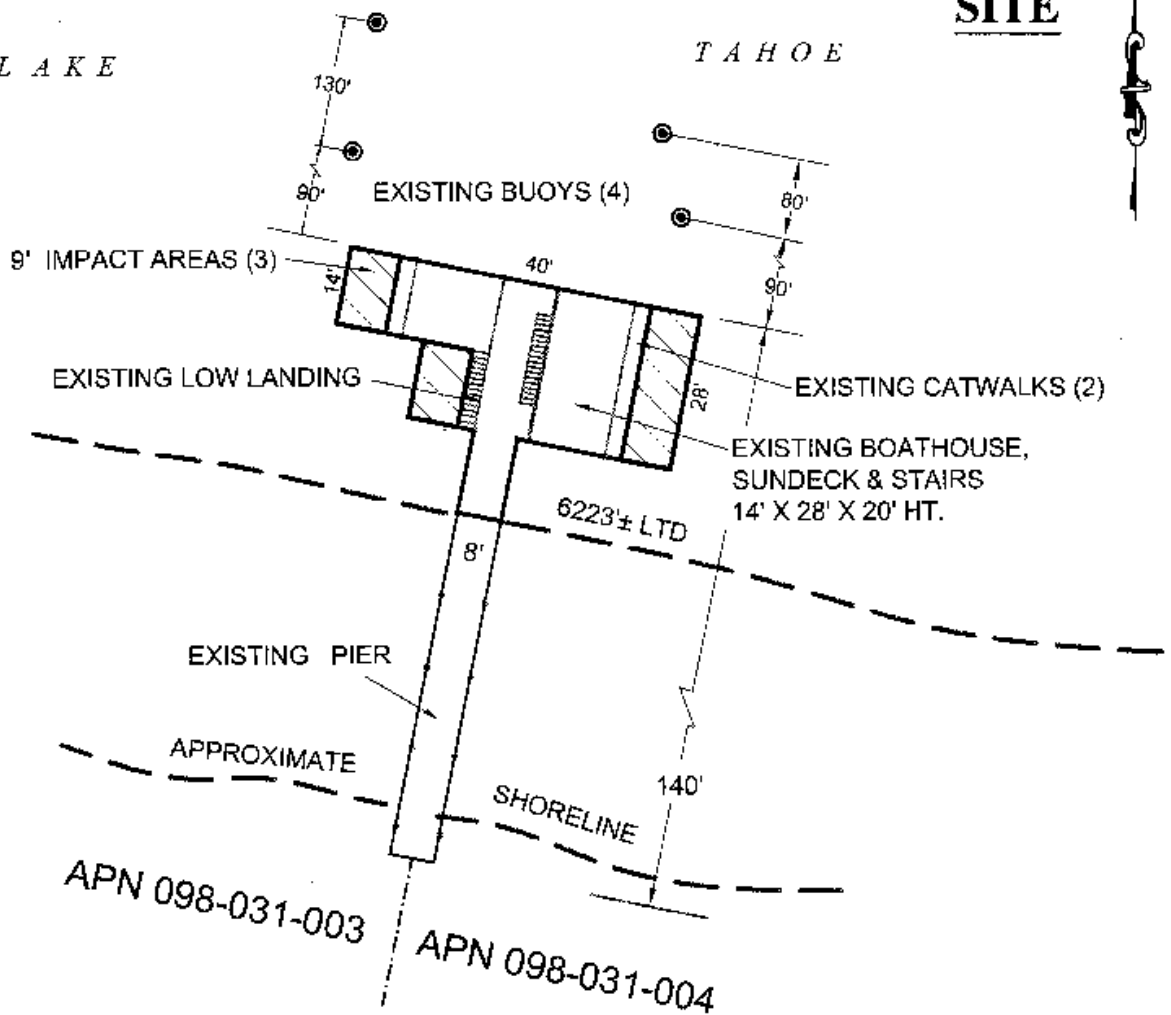


NO SCALE

SITE

L A K E

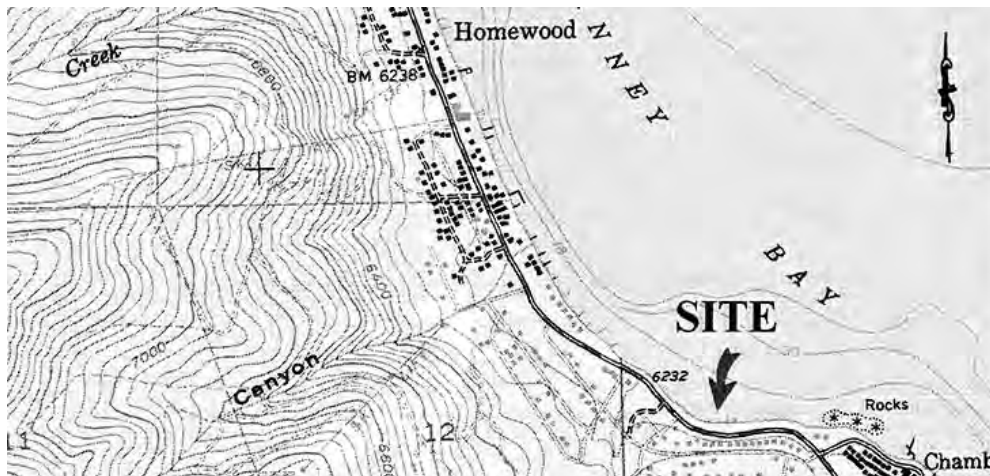
T A H O E



6140 AND 6150 WEST LAKE BLVD., NEAR HOMEWOOD

NO SCALE

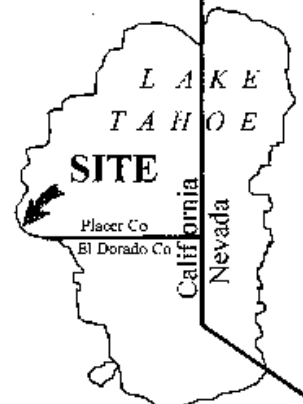
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4884.1
 SCHULER/OLIVER
 APN 098-031-003 & 004
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJJ 02/20/14

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.