

**CALENDAR ITEM
C15**

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06/22/17
PRC 4067.1
K. Connor

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST;
ACCEPTANCE OF A LEASE QUITCLAIM DEED; AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Tahoe Mountain Properties, LLC, a California limited liability company

APPLICANT:

Greg Heller, as Trustee of The Eagle's Nest Trust, Dated August 1, 2016

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6900 West Lake Boulevard,
near Tahoma, Placer County

AUTHORIZED USE:

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

LEASE TERM:

10 years beginning June 22, 2017.

CONSIDERATION:

\$1,872 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee shall not store any personal items or construct any improvements within the Public Trust easement that may impair the public uses of access, navigation, fishing and lake related recreational uses.
3. If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the

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adoption of a Final Environmental Impact Statement for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such authorization within the time limit, they may be required to remove the buoys.

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

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

The Applicant owns the upland adjoining the lease premises. On February 22, 2013, the Commission authorized a 10-year General Lease – Recreational Use for two mooring buoys, reconstruction of the pier and boathouse, and replacement of a boat lift in the boathouse to Tahoe Mountain Properties, LLC, a California limited liability company ([Calendar Item 53, February 22, 2013](#)). That lease will expire February 21, 2023. On August 26, 2016, the upland was deeded to the Applicant. The Applicant is applying for issuance of a new lease for the continued use and maintenance of the pier, boathouse with boat lift, and two existing mooring buoys.

The Lessee has executed a quitclaim deed releasing its interest in the lease. Staff recommends acceptance of the quitclaim deed and issuance of a new lease.

The Lessee paid annual rent through February 21, 2017. Staff recommends that the Commission approve a new lease effective on June 22, 2017. Staff recommends that the Commission accept compensation for the unauthorized occupation of State land in the amount of \$616 for the period beginning February 22, 2017, through June 21, 2017, the day before the new lease becomes effective. Commission staff sent an annual rent invoice to the Lessee for the 2017-2018 lease period that the Lessee did not pay. The invoice was issued before Commission staff became aware of the transfer of the upland property. Because the Lessee was no longer the upland owner during this time and because the Applicant agreed to be responsible for the rent dating from February 22, 2017, staff

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does not believe it is in the State's best interests to pursue collection of the rent, penalty, and interest from the Lessee.

The authorized improvements facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The pier is built on pilings with the immediate area being slightly sloped, rocky, and with large cobble. The topography and the location of upland structures provides access for the pier and allows the public to walk or navigate under the pier within the Public Trust easement. The two buoys are located directly lakeward of the upland property and occupy a relatively small area of Lake Tahoe.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and costal waterways.
2. Acceptance of the quitclaim deed and waiver of rent, penalty, and interest are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions that will not result in direct or indirect physical changes in the environment.

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Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. Staff recommends that the Commission find that issuance of the lease 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.

4. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is 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:

Find that issuance of the lease 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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time or for the foreseeable term of the lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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.

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AUTHORIZATION:

1. Waive annual rent, penalty, and interest due for the period of February 22, 2017, through February 21, 2018, and void annual rent invoice #41217 issued to Tahoe Mountain Properties, LLC, a California limited liability company.
2. Authorize acceptance of a quitclaim deed, effective June 21, 2017, of Lease No. PRC 4067.1, a General Lease – Recreational Use, issued to Tahoe Mountain Properties, LLC, a California limited liability company.
3. Authorize acceptance of compensation in the amount of \$616 for unauthorized occupation of State land for the period beginning February 22, 2017 through June 21, 2017.
4. Authorize issuance of a General Lease – Recreational Use to Greg Heller, as Trustee of The Eagle's Nest Trust Dated August 1, 2016; beginning June 22, 2017, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse with boat lift, and 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; annual rent in the amount of \$1,872, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4067.1

LAND DESCRIPTION

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 8, 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 – PIER

All those lands underlying an existing pier, an existing boathouse with boat lift and wrap around catwalk adjacent to that Parcel described in that Grant Deed recorded August 26, 2016 as Document Number 2016-0071341 in Official Records of said County.

TOGETHER WITH any applicable impact area.

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

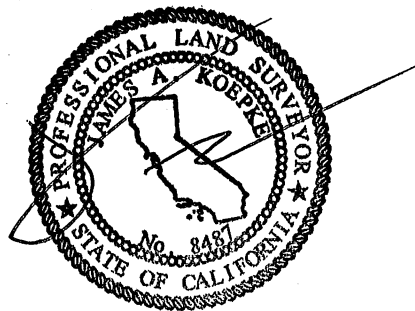
PARCELS 2 & 3 – BUOYS (2)

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to said Parcel.

Accompanying plat is hereby made part of this description.

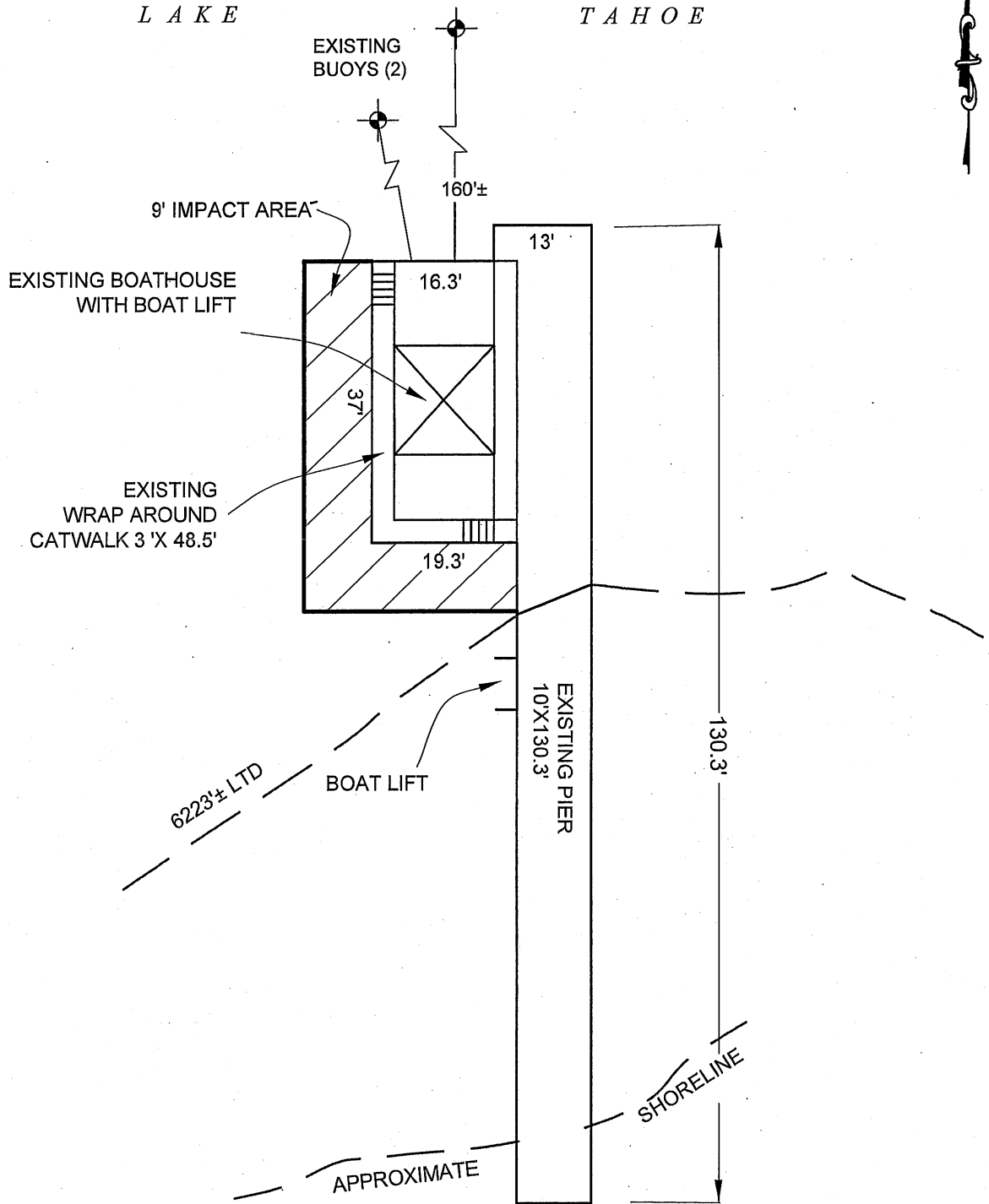
END OF DESCRIPTION

Prepared March 27, 2017 by the California State Lands Commission Boundary Unit.



L A K E

T A H O E



APN 098-200-009

EXHIBIT A

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LAND DESCRIPTION PLAT
 PRC 4067.1, EAGLE'S NEST TRUST
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION

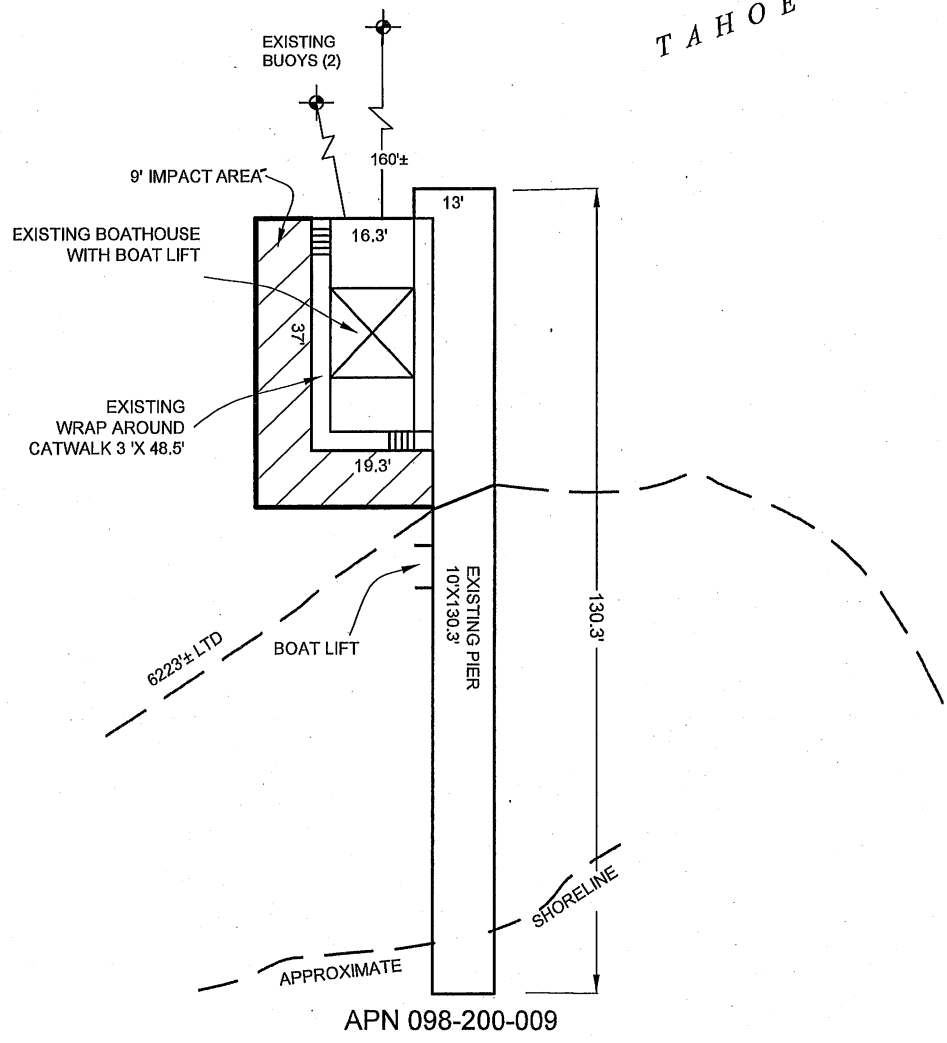


SITE

NO SCALE

L A K E

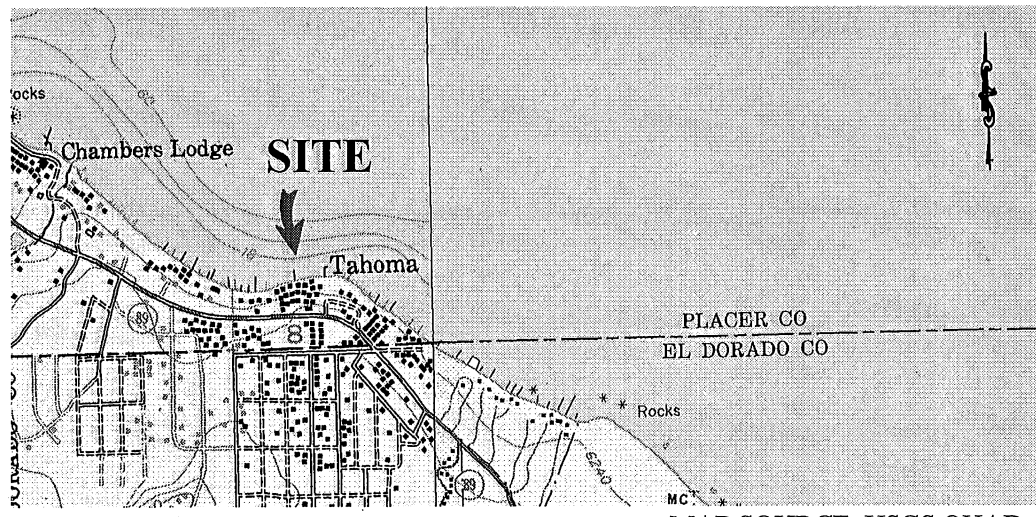
T A H O E



6900 WEST LAKE BLVD., NEAR TAHOMA

NO SCALE

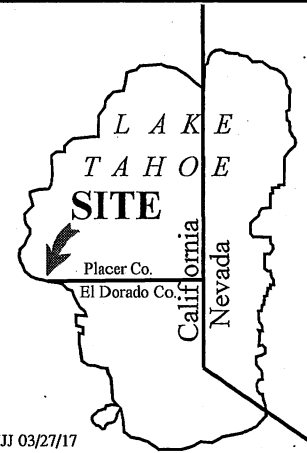
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4067.1
 EAGLE'S NEST TRUST
 APN 098-200-009
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJJ 03/27/17

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.