

**CALENDAR ITEM
C04**

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S 1

03/29/12
WP 4419.9
R. Barham

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Richard L. Niello, Trustee of the Marital Trust of the Niello Family Trust dated May 17, 1990

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2240 North Lake Boulevard, near Tahoe City, Placer County.

AUTHORIZED USE:

Use and maintenance of two existing mooring buoys not previously authorized by the Commission.

LEASE TERM:

10 years, beginning March 29, 2012.

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

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OTHER PERTINENT INFORMATION:

1. Applicant owns the upland parcel adjoining the lease premises.
2. On July 15, 1991, the Commission authorized a Recreational Pier Permit with Ellen F. Niello for a pier. That permit expired on April 6, 1996. On December 3, 2001, the upland property ownership was deeded to Richard L. Niello, Trustee of the Marital Trust of the Niello Family Trust dated May 7, 1990. Applicant is now applying for a new General Lease - Recreational Use.
3. The prior permit authorized an existing pier. Commission staff has now determined that the pier does not extend waterward of elevation 6223 feet, Lake Tahoe Datum, and, therefore is not located on sovereign land. As a result, the application is only for two existing mooring buoys that were not previously authorized by the Commission but have been in Lake Tahoe for many years. Staff recommends bringing existing mooring buoys under lease, subject to the Applicant's obtaining TRPA permit authorization.
4. 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.
5. Because the application and fees were 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.
6. Pursuant to the Commission's delegation of authority and State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined this activity is exempt from the requirements of CEQA as a categorically

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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:

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.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Richard L. Niello, Trustee of the Marital Trust of the Niello Family Trust dated May 17, 1990, beginning March 29, 2012, for a term of 10 years, for the continued use and maintenance of two mooring buoys not previously authorized by the Commission 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 in the amount of no less than \$1,000,000.

EXHIBIT A

PRC 4419.9

LAND DESCRIPTION

Two parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 5, Township 15 North, Range 17 East, M.D.M., as shown on Official Government Township Plat approved November 9, 1866, County of Placer, State of California, more particularly described as follows:

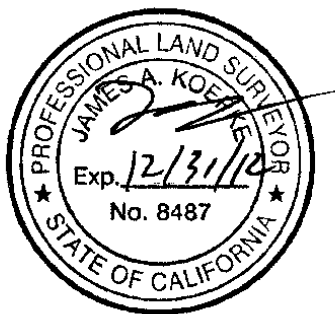
PARCEL 1 & 2 – BUOY

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to parcels one and two as described in Grant Deed recorded December 3, 2001 as Document Number 2001-0128769 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 01/30/2012 by the California State Lands Commission Boundary Unit.



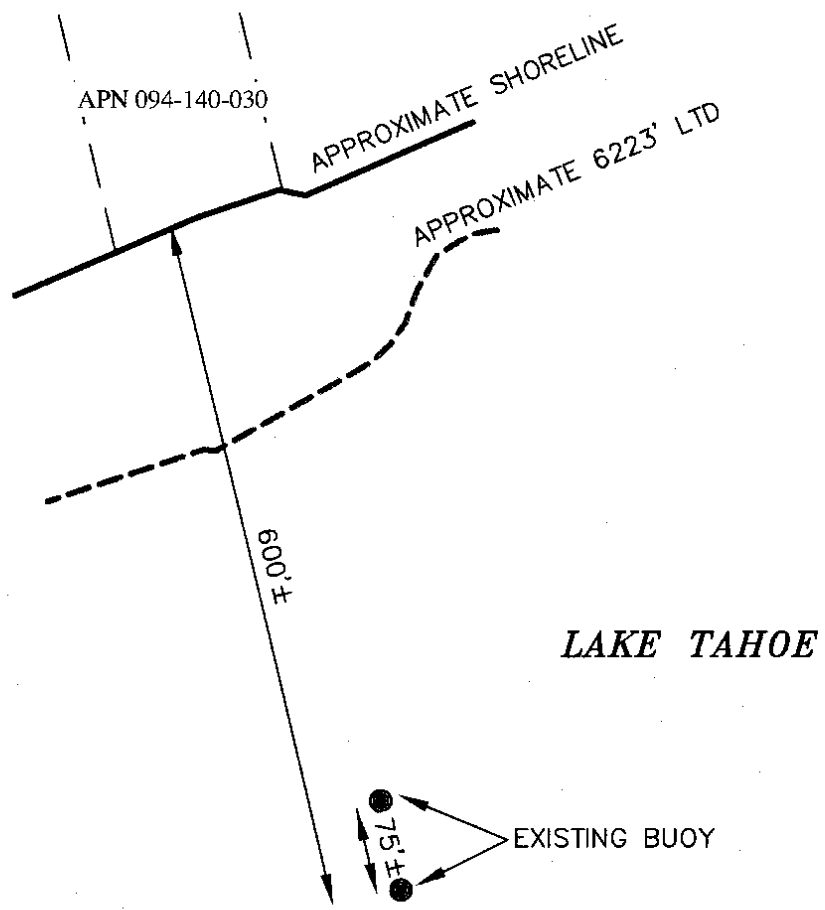


EXHIBIT A

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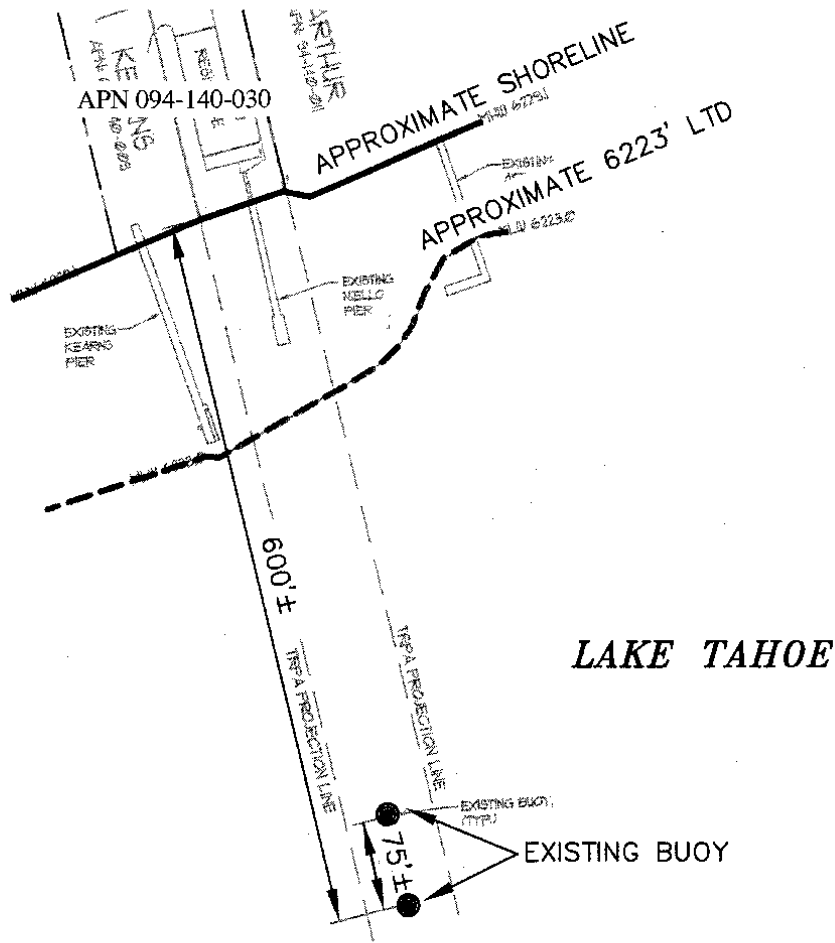
LAND DESCRIPTION PLAT
 PRC 4419.9, NIELLO
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



2240 NORTH LAKE BLVD., TAHOE CITY

NO SCALE

LOCATION

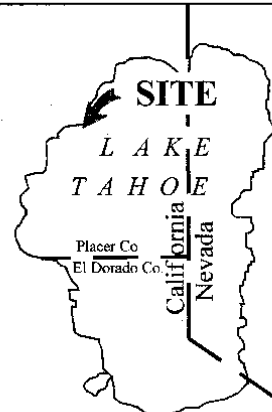


MAP SOURCE: USGS QUAD

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 B

PRC 4419.9
 NIELLO FAMILY TRUST
 APN 094-140-030
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



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