

**CALENDAR ITEM
C03**

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12/06/16

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PRC 7401.1
M.J. Columbus

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST AND TERMINATION
AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Robert H. Zerbst and Anne K. Zerbst, Trustees of the Zerbst 2003 Family Trust
dated March 28, 2003

APPLICANT:

Glenn A. Johansen and Deborah G. Johansen

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2600 West Lake Boulevard,
near Tahoe City, Placer County.

AUTHORIZED USE:

Continued use and maintenance of two existing mooring buoys.

LEASE TERM:

10 years, beginning January 19, 2016.

CONSIDERATION:

\$754 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. If Lessee does not have valid Tahoe Regional Planning Agency (TRPA) buoy permits, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such

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authorization within the time limit, they may be required to remove the buoys.

3. 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, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On June 29, 2015, the Commission authorized a 10-year General Lease – Recreational Use to Robert H. Zerbst and Anne K. Zerbst, Trustees of the Zerbst 2003 Family Trust dated March 28, 2003 ([Calendar Item C13, June 29, 2016](#)). That lease will expire on January 27, 2024. On January 19, 2016, the upland was deeded to Glenn A. Johansen and Deborah G. Johansen who are now applying for a General Lease – Recreational Use for the continued use and maintenance of two existing mooring buoys.

Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland property and mooring buoys without notifying Commission staff and executing a lease quitclaim deed. Commission staff sent an annual rent invoice to the Lessee for the 2016-2017 lease period that the Lessee did not pay. Staff believes it is not in the State's best interests to pursue the collection of rent, penalty, and interest from the Lessee for the period of January 28, 2016, through January 27, 2017, since they were no longer the upland owners as of January 19, 2016, and the Applicant has already agreed to be responsible for rent during this time.

The subject mooring buoys 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 buoys have existed for many years at this location. The buoys are located directly lakeward of the upland property and occupy a relatively

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small area of the lake. The mooring buoys do not substantially interfere with the Public Trust needs at this time and at this location.

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 the lease for two mooring buoys is consistent with the common law Public Trust Doctrine and is 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.
2. Termination of the lease 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.

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.

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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 termination of the prior lease; waiver of rent, penalty, and interest; and issuance of the proposed lease will not substantially impair public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and 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.

AUTHORIZATION:

1. Waive annual rent, penalty, and interest due for the period of January 28, 2016, through January 27, 2017, and void annual rent invoice #38476 issued to Robert H. Zerbst and Anne K. Zerbst, Trustees of the Zberst 2003 Family Trust dated March 28, 2003.
2. Authorize termination, effective January 18, 2016, of Lease No. PRC 7401.1, a General Lease – Recreational Use, issued to

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Robert H. Zerbst and Anne K. Zerbst, Trustees of the Zerbst 2003 Family Trust dated March 28, 2003.

3. Authorize issuance of a General Lease – Recreational Use to Glenn A. Johansen and Deborah G. Johansen, beginning January 19, 2016, for a term of 10 years, for the continued use and maintenance of 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 \$754 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 7401.1

LAND DESCRIPTION

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 24, Township 15 North, Range 16 East, M.D.B.&M., as shown on Official Government Township Plat approved December 20, 1865, County of Placer, State of California, more particularly described as follows:

Two circular parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded January 19, 2016 as Document Number 2016-0003415-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 05/16/2016 by the California State Lands Commission Boundary Unit.



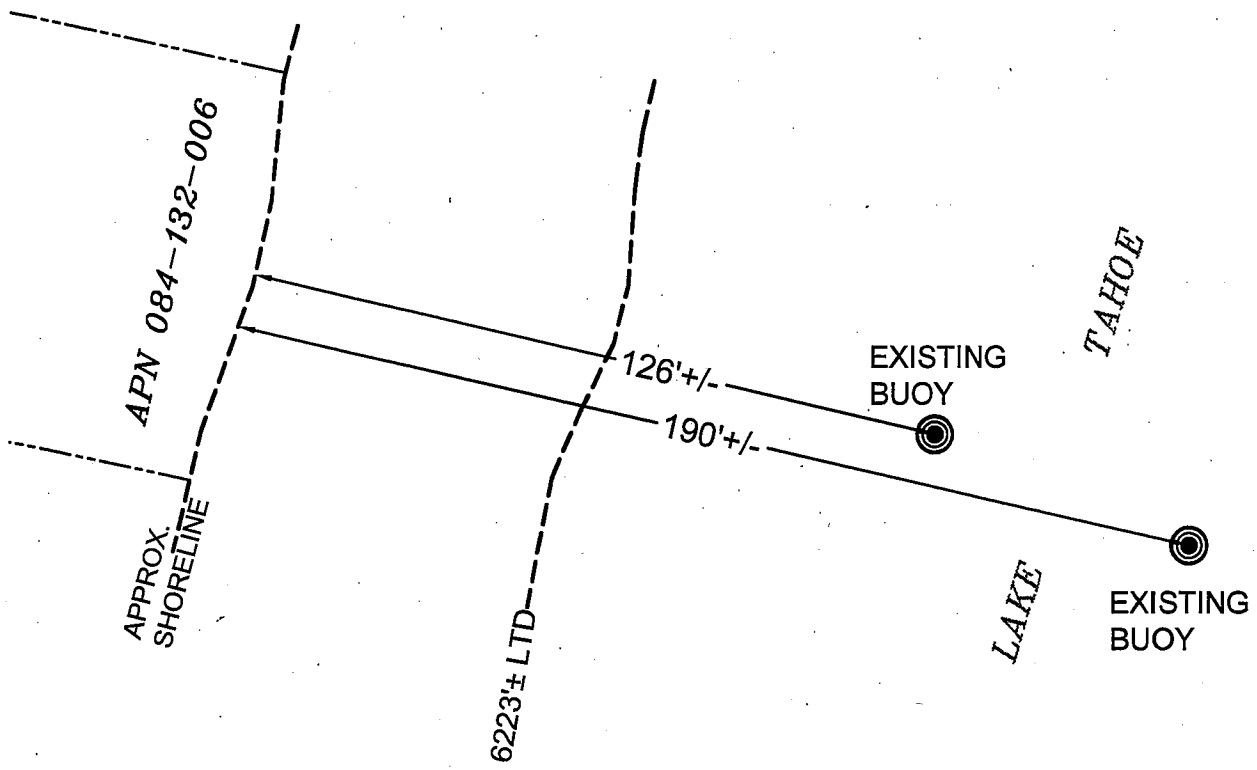


EXHIBIT A

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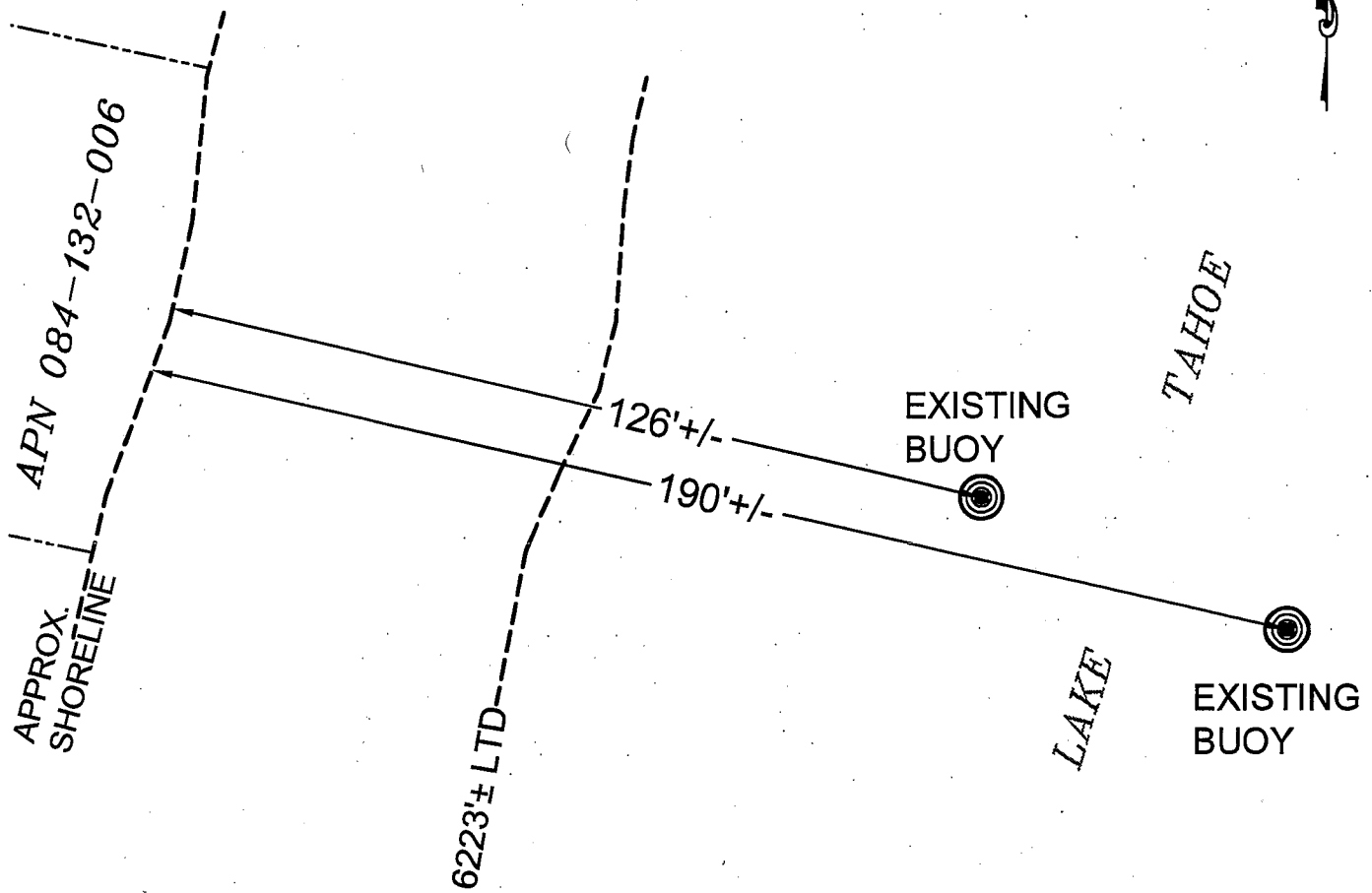
LAND DESCRIPTION PLAT
PRC 7401.1, JOHANSEN
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

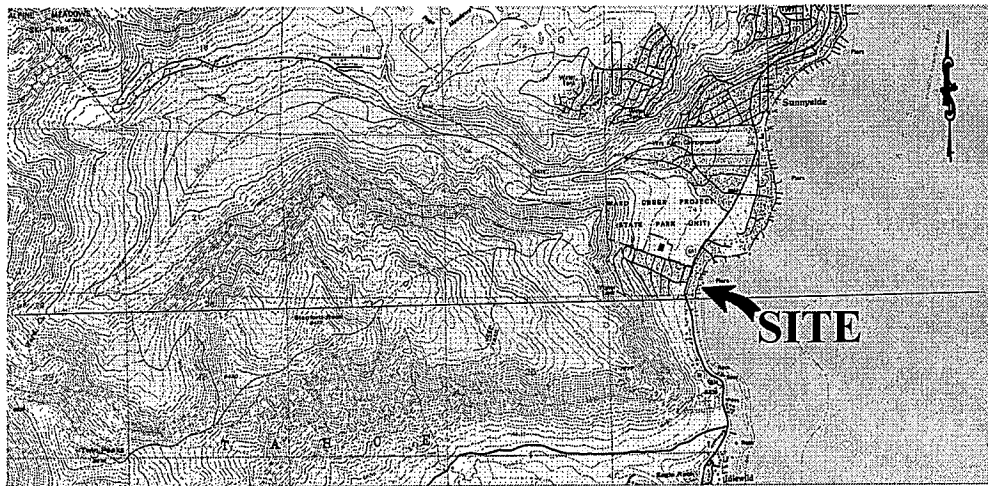
SITE



2600 WEST LAKE BLVD., NEAR TAHOE CITY

NO SCALE

LOCATION

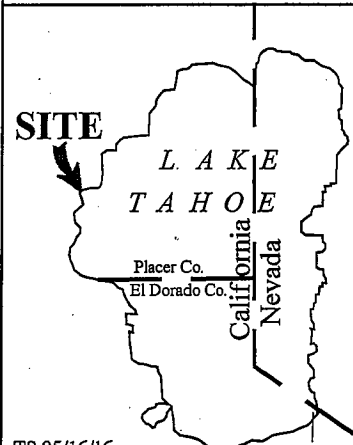


MAP SOURCE: USGS QUAD

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 7401.1
 JOHANSEN
 APN 084-132-006
 GENERAL LEASE-
 RECREATIONAL USE
 PLACER COUNTY



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