

**CALENDAR ITEM
C34**

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06/21/13
PRC 4923.1
N. Lee

GENERAL LEASE - RECREATIONAL USE

APPLICANT:

Copyright Services, Ltd., a California Corporation

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6770 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and two mooring buoys previously authorized by the Commission and use and maintenance of an existing boat lift not previously authorized by the Commission.

LEASE TERM:

10 years, beginning October 31, 2013.

CONSIDERATION:

\$2,142 per year, with 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.

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 after 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

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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.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On June 19, 1998, the Commission authorized a General Lease – Recreational Use with Copyright Services, Ltd. for an existing pier and two mooring buoys. That lease expired on October 30, 2007. The Applicant is now applying for a new General Lease – Recreational Use.
3. The Applicant's existing boat lift has been in Lake Tahoe for many years but has not been previously authorized by the Commission. Staff recommends including the existing boat lift as an authorized improvement in the lease.
4. In the lease application submitted by the Applicants, they requested Commission authorization for a third existing buoy and provided a copy of a buoy permit issued by TRPA in March 2010 permitting more than two buoys per littoral parcel under the then "grandfather clause" adopted by TRPA in 2008.

As background, TRPA adopted new shorezone ordinances in 2008 which authorized TRPA to issue a permit to a lakefront owner for a third existing private buoy located adjacent to their lakefront parcel if the owner could verify that the buoy had been placed and had continually been in the lake since prior to 1972 or had an existing valid lease for a third buoy from the Commission or a valid permit from the U.S. Army Corps of Engineers.

Absent a valid lease from the Commission for use of State lands, TRPA began permitting a third "grandfathered" buoy. Commission staff commented to TRPA several times prior to adoption of this ordinance that there had been no analysis of the need for a third buoy and the ordinance was giving recognition for unauthorized buoys that if they were to be placed as new would not qualify for a permit under the 2008 and pre-2008 Code of Ordinances, which allowed only two buoys per single littoral parcel. In 2010, the TRPA buoy permits issued, as a result of the adoption of the 2008 TRPA ordinances were found to be invalid by the U.S. District Court. The invalidity of these buoy permits was upheld in the 9th Circuit U.S. Court of Appeals.

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5. The Commission's records indicate that staff was unaware of buoys offshore of the Applicant's littoral parcel as far back as the first lease issued in 1958 to authorize an existing pier. In 1982, the Applicant requested a lease for three existing unauthorized buoys along with the existing pier. The Commission authorized a lease for the pier and three buoys on August 13, 1982 and upon expiration of the lease, the Commission authorized a lease for the pier and three buoys on July 19, 1993.

Just a few months later, in October 1993, staff conducted a site inspection and observed four mooring buoys adjacent to the Applicant's lakefront parcel. Because the Applicant had placed a fourth unauthorized buoy and the fact that TRPA ordinances in effect at this time allowed only two buoys offshore of a single littoral parcel, staff informed the Applicant by a letter dated October 18, 1993 that two of the four buoys must be removed in order to comply with TRPA ordinances. In 1994, the Applicant confirmed that two buoys had been removed and, on August 3, 1994, the Commission approved a lease amendment authorizing the pier and two mooring buoys. In 1998, the Applicant executed a new 10-year lease which again authorized two buoys and the pier.

6. Because of the court decision, TRPA is now operating under the pre-2008 Code of Ordinances which does not have a third buoy grandfather clause. As determined in 1993, recommending approval for a third buoy would be in direct conflict with the current TRPA Code of Ordinances and the Commission's standard lease provisions. Based on the Applicant's written confirmation, all but two mooring buoys were removed in 1994. Thus, the third buoy should not have qualified under the "grandfather clause" in TRPA's 2008 Code of Ordinances. On May 21, 2013, staff wrote to the Applicant advising that staff could not recommend including authorization for a third buoy in the new lease because of the conflict with TRPA's current code and the Commission's standard lease provisions. Staff therefore requested that the existing third buoy be removed.
7. After the prior lease expired, the Applicant continued to pay the annual rent in effect during the term of that lease. Pursuant to the expired lease, the annual rent in effect during any holding-over shall be increased by 25 percent. Staff is recommending that the Commission accept the additional 25 percent of holdover rent in the amount of \$965 for the period beginning October 31, 2007 through October 31, 2012.
8. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA)

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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.

9. 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:

1. Authorize acceptance of additional holdover rent in the amount of \$965 for the period of October 31, 2007 through October 30, 2013.
2. Authorize issuance of a General Lease – Recreational Use to Copyright Services, Ltd., a California Corporation, beginning October 31, 2013, for a term of 10 years, for the continued use and maintenance of an existing pier and two mooring buoys previously authorized by the Commission and use and maintenance of an existing boat lift not previously authorized by the Commission as

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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 \$2,142, 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 4923.1

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 7, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, catwalk and boatlift, lying adjacent to those parcels described in Grant Deed recorded as Document Number 8105, on October 30, 1953 in Vol. 639, page 156 in Official Records of said County.

TOGETHER WITH a ten foot impact area.

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

PARCEL 2 & 3 – BUOYS

Two circular parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Grant Deed recorded as Document Number 8105, on October 30, 1953 in Vol. 639, page 156 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 08/21/2012 by the California State Lands Commission Boundary Unit.



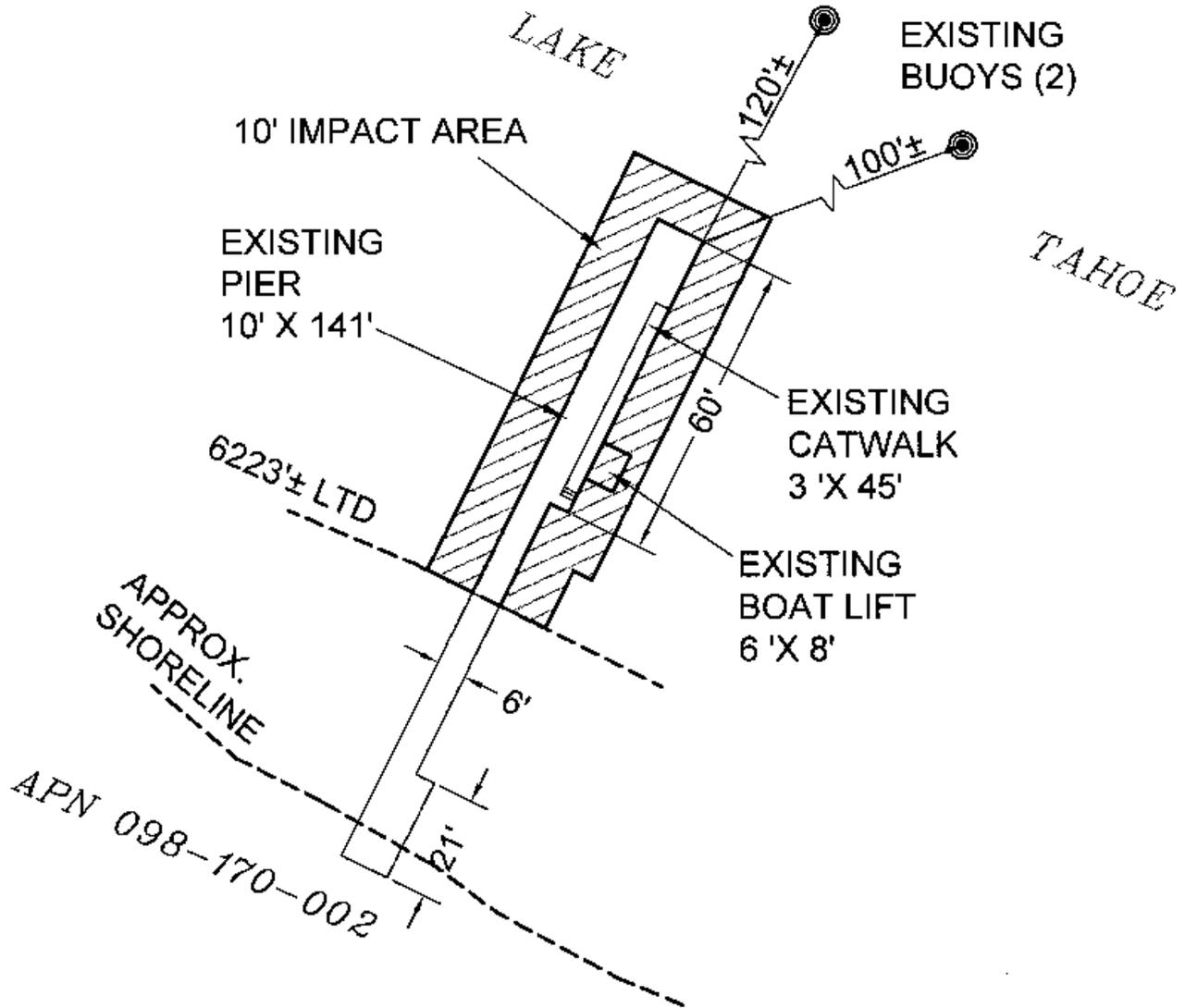


EXHIBIT A

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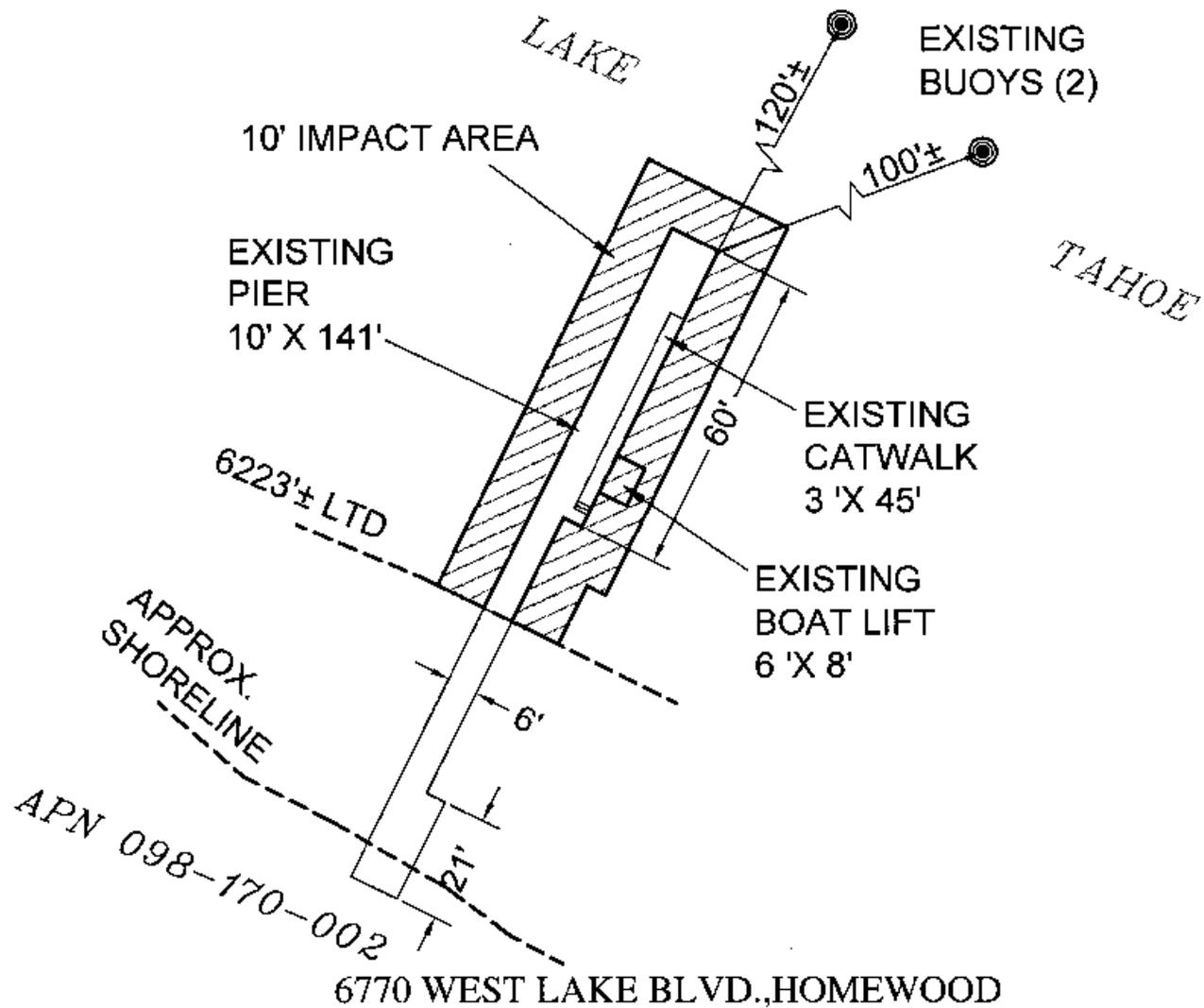
LAND DESCRIPTION PLAT
PRC 4923.1, COPYRIGHT SERVICES, LTD
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



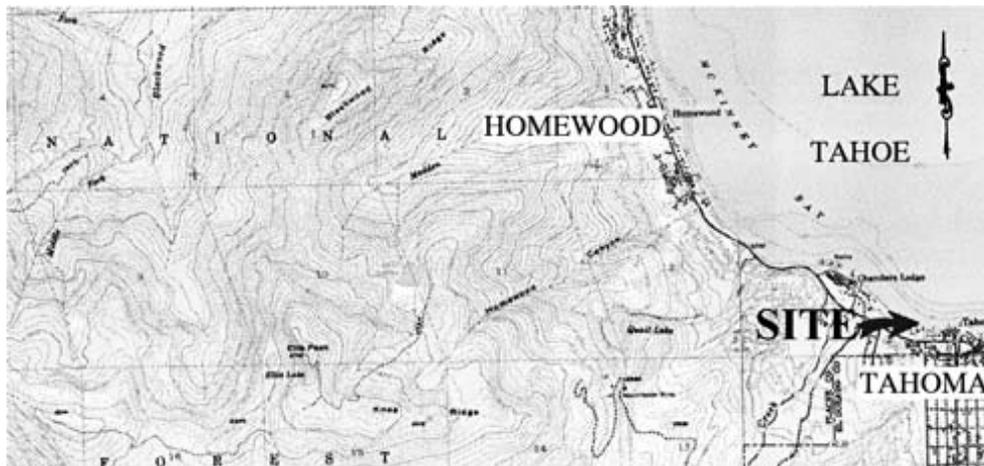
NO SCALE

SITE



NO SCALE

LOCATION

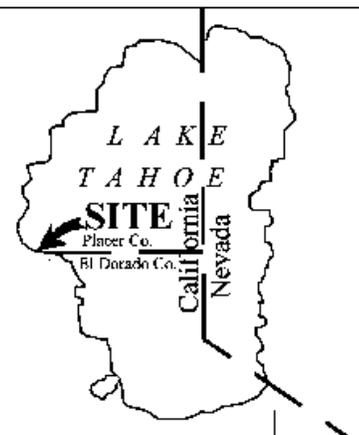


MAP SOURCE: USGS QUAD

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 4923.1
 COPYRIGHT SERVICES, LTD
 APN 098-170-002
 GENERAL LEASE-
 RECREATIONAL USE
 PLACER COUNTY



TS 08/21/12