

Staff Report 19

LESSEE/ASSIGNOR/SUBLESSEE:

Sierra Boat Company, Inc., a California corporation

ASSIGNEE/SUBLESSOR:

Sierra Boat Properties, LLC, a California limited liability company

SECURED-PARTY LENDER:

First Republic Bank

PROPOSED ACTION:

Rescission of previous Commission action, and new authorization for assignment of Lease, approval of a sublease endorsement, and agreement and consent to encumbrance of Lease Number PRC 5680, a General Lease – Commercial Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5146 North Lake Boulevard, Assessor's Parcel Number 115-030-050, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Lease: Continued use, operation, and maintenance of an existing commercial pier, breakwater, fueling facility, and 15 mooring buoys.

Sublease: Continued use, operation, and maintenance of an existing commercial pier, breakwater, fueling facility, and 15 mooring buoys.

TERM:

Lease: 20 years, beginning July 11, 2012, ending July 10, 2032.

Sublease: Beginning the later of March 1, 2022, or the close of a stock acquisition, but no later than ~~June 30~~August 31, 2022, and ending July 10, 2032.

CONSIDERATION:

\$5,798 per year, against five percent of the gross annual income derived from the commercial activities of mooring rentals; and one and one-half cents per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and two cents per gallon thereafter, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$3,000,000 per occurrence.
- Execution of a Surety bond or other security in the amount of \$100,000.
- Lessee agrees to the implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and "Best Management Practices for Guest Dock Users and Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories. Lessee shall post the "BMPs for Marina Owners/Operators" and "BMPs for Guest Dock Users and Boaters" in prominent places within the lease premises. The Lessee shall provide the Commission, on the first anniversary of the lease and tri-annually thereafter, a report on compliance with all BMPs.

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:

On October 21, 2021, the Commission authorized the assignment of Lease, approval of a sublease endorsement, and agreement and consent to encumbrance of Lease Number PRC 5680, a General Lease – Commercial Use, for a commercial pier, breakwater, fueling facility, and 15 mooring buoys from Assignor, Sierra Boat Company, Inc., to Assignee, Sierra Boat Properties, LLC ([Item 03, October 21, 2021](#)). The Commission's authorization was conditional upon the parties completing the acquisition by January 1, 2022.

The Assignee notified staff in January 2022, that the property interests had not transferred from the Assignor to the Assignee by January 1, 2022. Therefore, the previous authorization is being rescinded because the condition was not met, and the Assignor and Assignee are now proposing to complete the acquisition by March 1, 2022.

On May 24, 2012, the Commission authorized a 20-year General Lease – Commercial Use to the current Lessee (and proposed Assignor): Sierra Boat Company, Inc. (hereafter “Current Lessee”) ([Item C39, May 24, 2012](#)). That lease will expire on July 10, 2032. However, the proposed Assignee, Sierra Boat Properties, LLC (hereafter “Proposed Lessee”) is the current owner of the upland property. The Current Lessee and the Proposed Lessee are owned and managed by the same individuals. The Hall Family has owned and operated the facilities as the Current Lessee and Proposed Lessee since 1977. The Hall Family is in the process of transferring shares of both entities to new owners, with Mr. Herb Hall retaining a ten percent (10%) ownership interest in both. Since the Proposed Lessee is the legal owner of the real property associated with the lease, the parties wish to assign the lease to the Proposed Lessee. The Current Lessee will continue to manage the facilities, prompting the parties to request the Commission approve a sublease to the Current Lessee. The sublease will require the Current Lessee, as sublessee, to adhere to all of the terms and conditions of the lease, and the Proposed Lessee, as sublessor, will remain ultimately responsible for ensuring lease compliance. Therefore, this structure will protect the Commission from an event of default. The effective date of the assignment will be the later of March 1, 2022, or at the close of a stock acquisition between the ownership interest of the Assignor and Assignee, but no later than June 30/August 31, 2022, and ending July 10, 2032. The parties are requesting approval of an assignment of Lease Number PRC 5680; a sublease endorsement with Sierra Boat Company, Inc. for the continued use, operation, and maintenance of an existing commercial pier, breakwater, fueling facility, and 15 mooring buoys; and Consent to Encumbrance of Lease Number PRC 5680.

The current President and Corporate Executive Officer (CEO), Herb Hall, has worked and has been involved with the management of the subject facilities for more than 40 years and will continue in his position as President and CEO. The Proposed Lessee currently leases real estate to the Current Lessee. Staff has also received information about the individuals buying shares of the Proposed Lessee. Staff has verified that the Proposed Lessee has a satisfactory level of experience in managing large private equity firms and has years of experience in the operation, finance, and governance of large businesses. The Assignee is required to execute a financial performance surety in the amount of \$100,000. The surety mitigates the risk

with the Proposed Lessee being a new owner of the facilities with no available historic performance information and is also surety for the restoration of the site.

The Proposed Lessee agrees to perform and be bound by the terms, conditions, covenants, and agreements contained in the lease. Staff recommends an assignment of the lease to reflect a change in ownership from Assignor (Current Lessee) to Assignee (Proposed Lessee), and a sublease by and between Proposed Lessee and the Current Lessee. The Proposed Lessee is in the process of obtaining a mortgage loan in favor of First Republic Bank (Secured-Party Lender), for a loan amount not to exceed \$10,500,000. Under the terms of the loan, the Secured-Party Lender is requiring the Proposed Lessee to pledge their interest in Lease Number PRC 5680 as additional security. The purpose of the loan is to finance the new owners' purchase of shares of both the Current and Proposed Lessee. The loan will be backed by the assets of Proposed Lessee and personal guarantees provided by the new business owners.

The encumbrance of the lease would be implemented through a document, "Agreement and Consent to Encumbrance of Lease," that would include protections for the State land associated with the lease. These protections include requirements that: 1) no subsequent encumbrance of the lease shall be executed without the prior written consent of the Commission; 2) transfer of the lease to a third party without written notice to the Commission within 45 days of the transfer relieves the Commission of noticing obligations under the Encumbrance Agreement; 3) if the Secured Party-Lender becomes the lessee, it shall be bound by all terms and conditions of the lease; and 4) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent. The indebtedness and financing are necessary to achieve the purpose and objectives of the Lease because it will ensure the continued management and maintenance of the facilities as well as the Lessee's financial capability to fulfill all lease terms. Therefore, the financing is in the State's best interest.

The existing 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.

The proposed rescission of previous authorization, and new assignment of lease, approval of a sublease endorsement, and agreement and consent to encumbrance do not alienate the State's fee simple interest in the underlying land, nor will it permanently impair public rights. Approval of this lease assignment is limited to the remaining term of the 20-year lease and will not result in a change in

the use of, or impacts to, Public Trust resources at this location, at this time, and for the remaining term of the lease.

CONCLUSION:

For these reasons, staff recommends finding that approval of this assignment, sublease endorsement, and agreement and consent to encumbrance will not substantially interfere with the common law Public Trust Doctrine and are in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The Commission cannot unreasonably deny an assignment to a qualified party. The Applicant is qualified to hold the lease and staff has not discovered any information that would provide a basis for withholding the assignment. Upon expiration or prior termination of the lease, neither the assignor nor the assignee has any right to a new lease or to renewal of any previous lease.
2. This action is consistent with the “Meeting Evolving Public Trust Needs” Strategic Focus Area of the Commission’s 2021-2025 Strategic Plan.
3. Rescission of the prior authorization, and the new assignment of the lease, endorsement of a sublease, and agreement and consent to encumbrance are not projects as defined by the California Environmental Quality Act 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).

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment of the lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize rescission of Commission authorization, made on October 21, 2021, of an assignment of Lease Number PRC 5680 for a commercial pier, breakwater, fueling facility, and 15 mooring buoys from Assignor, Sierra Boat Company, Inc. to Assignee, Sierra Boat Properties, LLC, approval of a sublease endorsement, and agreement and consent to encumbrance for failure to meet the conditions of approval.
2. Authorize the assignment of Lease Number PRC 5680, a General Lease – Commercial Use, of sovereign land, as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof, from Sierra Boat Company, Inc. (Assignor) to Sierra Boat Properties, LLC (Assignee), effective the later of March 1, 2022, or at the close of a stock acquisition between the ownership interest of the Assignor and Assignee, but no later than ~~June 30~~August 31, 2022. Authorization shall expire if the stock acquisition has not occurred by ~~July~~September 1, 2022.
3. Authorize, by endorsement, a sublease between Sierra Boat Properties, LLC (Assignee) and Sierra Boat Company, Inc., a California corporation (Assignor), of Lease Number PRC 5680, which shall be subject to the terms of the Lease Agreement by and between Assignor and Assignee beginning the later of March 1, 2022, or the close of a stock acquisition, but no later than ~~June 30~~August 31, 2022, and ending July 10, 2032. Authorization shall expire if the stock acquisition has not occurred by ~~July~~September 1, 2022.
4. Authorize the Executive Officer or designee to execute the document titled "Agreement and Consent to Encumbrance of Lease," allowing Lessee's right, title, and interest in Lease Number PRC 5680 to be pledged as partial security for a loan in the principal amount not to exceed \$10,500,000 in favor of Secured Party – Lender, in substantially the same form as that on file in the Sacramento

office of the Commission; authorize the Executive Officer or designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction, effective upon signature by all parties; and a performance surety in the amount of \$100,000.

EXHIBIT A

PRC 5680

LAND DESCRIPTION

Two parcels of submerged land lying in the bed of Lake Tahoe, adjacent to fractional Section 22, Township 16 North, Range 17 East, M.D.M., as shown on Official Government Township Plat approved November 10, 1865, Placer County, California, more particularly described as follows:

Parcel 1 – PIER

BEGINNING at a point on the 1950 Low Water Mark of Lake Tahoe between Stations 377 and 378, as said Low Water Mark and stations are shown on that certain map entitled "Survey of the Low Water Mark on the Shore of Lake Tahoe", filed in Book 2 of Surveys at Page 71, Placer County Records, from which said station 378 bears N 66°48'05" E 167.00 feet; thence S 6°30'00" E 76.00 feet; thence N 83°30'00" E 20.00 feet; thence S 6°30'00" E 33.00 feet; thence S 83°30'00" W 120.00 feet; thence N 6°30'00" W 28.00 feet; thence N 83°30'00" E 69.00 feet; thence N 6°30.00" W 71.70 feet to said Low Water Mark; thence along said Low Water Mark N 66°48'05" E 32.36 feet to the POINT OF BEGINNING.

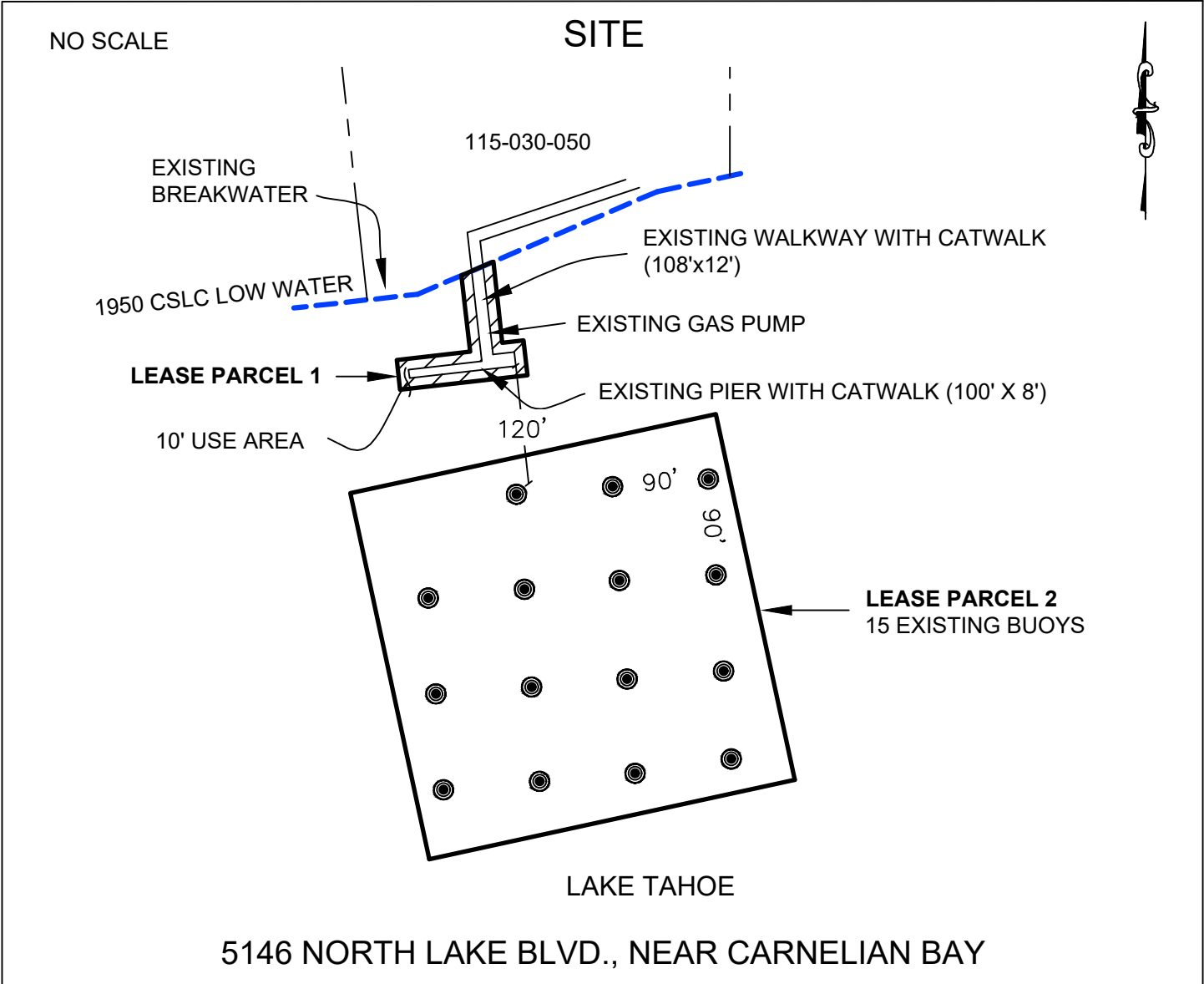
PARCEL 2 – BUOY FIELD

BEGINNING at a point which bears N 77°48'15" E 9.65 feet; thence S 12°11'45" E 215.00 feet from Station 378, as said station is shown on that certain map entitled "Survey of the Low Water Mark on the Shore of Lake Tahoe", filed in Book 2 of Surveys at Page 71, Placer County Records, thence S 12°11'45" E 350.00 feet; thence S 77°48'15" W 350.00 feet; thence N 12°11'45" W 350.00 feet; thence N 77°48'15" E 350.00 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared 2/1/2022 by the California State Lands Commission Boundary Unit.





NO SCALE

LOCATION

CARNELIAN BAY

ABATE BAY

SITE

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 5680
SIERRA BOAT PROPERTIES
APN 115-030-050
GENERAL LEASE -
COMMERCIAL USE
PLACER COUNTY

SITE

LAKE
TAHOE

Placer Co.
El Dorado Co.

California
Nevada

DJF 9/17/2021