

California Tahoe Conservancy
Agenda Item 7a
January 20, 2011

TECHNICAL CHANGES TO SPECIAL USE GUIDELINES

Summary: Consideration and possible authorization to make minor changes to the Special Use Guidelines, including revisions to fee schedules, and appraisal protocols for long-term public utility licenses.

Location: Throughout the California side of the Lake Tahoe Basin.

Fiscal Summary: Incidental staff costs.

Recommended Action: Adopt Resolution 11-01-01 (Attachment 1).

Background

In general, Conservancy lands have been purchased for water quality and environmental conservation values. As such, special uses are generally not granted. However, when special uses are granted, the Conservancy permits them pursuant to adopted Special Use Guidelines. First approved on February 19, 1988, the Conservancy's Special Use Guidelines (originally "Leasing Guidelines") were subsequently revised on July 17, 1992, July 24, 1998, and July 15, 2010.

"Special uses" involve the grant of a lease, license, or easement on Conservancy land to a public or private entity. Special uses are distinct from uses connected to the implementation of Conservancy projects. Such uses often include: access across Conservancy land to a neighboring property; temporary storage of materials on Conservancy land; testing of groundwater, soil composition, or other organic matter; installation of monitoring wells and related equipment; snow storage; and installation of water or utility lines.

The Board approved and adopted the most recent modifications to the Special Use Guidelines at the July 15, 2010 Board meeting. This approval incorporated an Errata Sheet provided the day of the meeting. Staff has subsequently identified three items that were not accurately included, inadvertently omitted, or inconsistently reflected between the staff recommendation, the proposed guidelines and/or Errata documents at that time. This staff recommendation addresses these discrepancies.

Description of Special Use Guidelines Changes

Staff recommends three technical corrections to the Special Use Guidelines adopted on July 15, 2010. The technical corrections and supporting reasons are described as follows:

- 1) Section 4. Special Use Request Fees – Temporary Uses and Short Term Uses- Commercial filming and photography – Staff inadvertently omitted an intended provision allowing a higher fee to be charged for filming events that may require extraordinary staff monitoring to protect State resources, as opposed to a standard photo shoot where the risk to State resources is minor. The corrected language would now read as follows, with the added provision shown in *italics*: “No location fee; \$100 License processing fee will be charged. *If extraordinary staff monitoring is deemed necessary, the licensee will pay an hourly rate for all staff time exceeding four hours.*”
- 2) Section 4. Special Use Request Fees – Temporary Uses – A third fee provision for temporary uses was appropriately included in the Special Use Guidelines provided to the Board with the Staff Recommendation but was inadvertently deleted from the Fee Schedule in the Errata sheet provided on the day of the meeting. For clarification purposes, this provision should be included as follows: “*All other commercial uses: A minimum fee of \$100. The total fee will be the greater of either: 1) the minimum fee; or 2) 5% of gross event entry receipts (pro-rated for the approximate percentage of Conservancy land used).*”
- 3) Section 4. Special Use Request Fees – Last paragraph addressing permanent or long-term interest in real property – The language providing flexibility for staff to seek appraisal review for both long-term licenses and easements should be relocated. This will clarify that the provision applies to both long-term licenses as well as easement situations, where appropriate. This language reads as follows: “*The Conservancy may seek the assistance of the Department of General Services, Real*

Estate Services Division to review an appraisal for either of the following:".
Note that the specific reference to appraisal review under the "easements bullet" will be deleted.

Implementation

In order to provide clarity to members of the public and the Board, a complete final version of the Guidelines is shown in Attachment 2. This version will supersede and replace all prior versions of the Special Use Guidelines, including the version adopted by the Board on July 15, 2010. If approved, the corrected Guidelines will become effective immediately, and will be posted on the Conservancy's website.

Consistency with the Conservancy's Enabling Legislation

Adoption and modification of the Special Use Guidelines is authorized under Government Code Section 66907.8, which allows the Conservancy to lease, rent, sell, exchange, or otherwise transfer any real property or interest therein for management purposes pursuant to terms and conditions approved by the Conservancy. Under Government Code Section 66907.9, the Conservancy is authorized to initiate, negotiate, and participate in agreements for the management of land it owns or controls. Government Code Section 66907.10 allows the Conservancy to improve and develop acquired lands for the purpose of protecting the natural environment and to meet any of the other objectives of its enabling legislation.

Compliance with the California Environmental Quality Act (CEQA)

All special uses projects fall within the purview of CEQA, and CEQA analysis is thus required. While the action proposed in this staff recommendation authorizing technical corrections to the Special Use Guidelines does not itself require CEQA review, each project implemented under the Guidelines will be subject to CEQA review. Staff will evaluate each project prior to implementation to determine whether the project is statutorily or categorically exempt from CEQA, or whether the project requires a negative declaration or environmental impact report. Where staff determines a project is statutorily or categorically exempt from CEQA, staff will file a Notice of Exemption with the State Clearinghouse. Where staff determines a project requires a negative declaration or an environmental impact report, the project will be brought to the Board for

adoption of environmental findings and authorization to expend funds to implement the project.

List of Attachments:

Attachment 1 – Resolution 11-01-01

Attachment 2 – Special Use Guidelines

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ATTACHMENT 1

California Tahoe Conservancy

Resolution

11-01-01

Adopted: January 20, 2011

TECHNICAL CHANGES TO SPECIAL USE GUIDELINES

Staff recommends that the Conservancy adopt the following resolution pursuant to Government Code Sections 66905 et seq., 66907.8, 66907.9, and 66907.10:

“The California Tahoe Conservancy hereby adopts the Special Use Guidelines attached to the accompanying staff recommendation, superseding all prior Leasing Guidelines and Special Use Guidelines, and hereby delegates to the Executive Director the authority to grant those special use requests which meet the criteria for delegation of authority to staff, as specified in the accompanying staff recommendation and attachments.”

I hereby certify that the foregoing is a true and correct copy of the resolution duly and regularly adopted by the California Tahoe Conservancy at a meeting thereof held on the 20th day of January 2011.

In WITNESS THEREOF, I have hereunto set my hand this 20th day of January 2011.

Patrick Wright
Executive Director

ATTACHMENT 2

CALIFORNIA TAHOE CONSERVANCY
URBAN LAND MANAGEMENT PROGRAM
Special Use Guidelines



January 20, 2011

State of California – The Resources Agency
CALIFORNIA TAHOE CONSERVANCY

www.tahoe.ca.gov

Inquiries

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Special Use Guidelines

1. ULM PROGRAM PURPOSE AND BACKGROUND

California Tahoe Conservancy Mission

The California Tahoe Conservancy (Conservancy) is a California State agency with a mission to preserve, protect, restore, enhance, and sustain the unique and significant natural resources and recreational opportunities of the Lake Tahoe Basin. Established by State law in 1984, the Conservancy's jurisdiction extends throughout the California side of the Lake Tahoe Region, as defined in California Government Code Section 66905. The Conservancy develops and implements projects to improve water quality, preserve Lake Tahoe's scenic beauty, provide recreational opportunities and public access, preserve wildlife habitat areas, and manage and restore lands to protect the natural environment.

Urban Land Management Program Overview

The Conservancy manages its lands consistent with the following five objectives:

- To manage property in a manner consistent with the purpose(s) for which it is acquired.
- To restore and enhance on-site resources.
- To resolve potential use conflicts.
- To coordinate the management of lands with other public agencies and private entities in order to facilitate more responsive, cost-effective, and/or comprehensive management arrangements.
- To continue to develop the Conservancy's administrative and fiscal capability to manage all types of acquired properties.

The Conservancy receives funding annually through the State Budget Process to support its program activities. The Conservancy annually allocates funding from its operating budget for property management and maintenance and from its capital outlay budget for property restoration and enhancement.

Superseded Prior Guidelines

The Conservancy approved its first Leasing Guidelines on February 19, 1988. These Leasing Guidelines were subsequently revised on July 17, 1992, July 24, 1998, and July 15, 2010. These Special Use Guidelines supersede and replace all prior guidelines.

2. OVERVIEW OF SPECIAL USE REQUESTS

"Special uses" involve the grant of a lease, license, or easement on Conservancy land to a public or private entity for a variety of uses. Such uses often include: access

across Conservancy land to a neighboring property; temporary storage of materials on Conservancy land; testing of groundwater, soil composition, or other organic matter; installation of monitoring wells and related equipment; snow storage; and installation of water or utility lines. Special uses are distinct from uses connected to the implementation of Conservancy projects or projects for which the Conservancy has given a grant. Special uses are not connected to projects in which the Conservancy is closely involved. The Conservancy permits special uses on its lands consistent with these guidelines through the execution by both parties of one of three documents: a license, a lease, or an easement.

The Conservancy has classified its special use requests into four distinct types of uses. These uses are outlined below:

1. Temporary Uses:

- Use of Conservancy land is for a duration of five days or less
- Use is granted pursuant to a lease or license agreement

2. Short Term Uses:

- Use of Conservancy land is for a duration of more than five days but less than six months
- Use is granted pursuant to a lease or license agreement

3. Long Term Uses:

- Use of Conservancy land is for a duration of six months or more, but is not of a permanent nature
- Use is granted pursuant to a lease or license agreement

4. Permanent Uses

- Use of Conservancy land is permanent
- Use is granted pursuant to an easement

The type of use will determine: (1) the application procedure for special use requestors (see below), and (2) the nature of the legal document granting the right to use Conservancy property. That is, each type of use carries with it distinct requirements pertaining to use, insurance, indemnification, impairment, waivers, attorneys fees, notices, etc.

3. CONSERVANCY REVIEW OF SPECIAL USE REQUESTS

The Special Use Request Application Process

In order to receive a special use lease, license or easement from the Conservancy, applicants must complete a Special Use Request Application. Applications are accepted at any time. Applications are available at the Conservancy office and on the Conservancy website: www.tahoe.ca.gov.

All public and private entities including Federal, State, Tribal, and local governments and entities, special districts, academic institutions, non-profit or for-profit corporations

and partnerships, public or private utilities, and individuals, are eligible to submit Special Use Request Applications.

Conservancy staff reviews completed applications and upon initial review by Conservancy staff, applicants may be required to provide additional information.

Minimum Requirements for Special Use Requests

Special use requests must meet the following requirements in order to be determined eligible requests:

- Use does not adversely affect the long term value and beneficial uses of the parcel(s);
- Use does not unduly impact the environment, including soil, wildlife, stream environment zone, and/or native vegetation;
- Use complies with all environmental regulations;
- Use is consistent with applicable regulatory requirements; and
- Use complies with, and applicant has acquired, all necessary permits.

Evaluation Criteria for Special Use Requests

The Conservancy evaluates and grants special use requests based upon information provided by applicants and according to the following evaluation criteria:

- Consistency with program objectives;
- Consistency with existing uses of Conservancy land;
- Existence of reasonable and feasible alternatives; and
- Application completeness

These evaluation criteria are more fully described below.

Consistency with Program Objectives. The nature of the requested use must further: (1) the purposes for which the Conservancy land was acquired, and (2) one or more of the following Conservancy Urban Land Management Program objectives:

- Restoration and enhancement of on-site resources.
- Resolution of potential use conflicts.
- Coordination and management of Conservancy lands with other public agencies and private entities in order to facilitate more responsive, cost-effective, and/or comprehensive management arrangements.
- Development of the Conservancy's administrative and fiscal capability to manage its properties.

Consistency with Existing Uses of Conservancy Land. The requested use must be consistent with all other existing uses of the requested Conservancy land, including, but not limited to: existing leases, licenses, and easements; past, current, or known future projects; and any encumbrances.

Existence of Reasonable and Feasible Alternatives. The applicant must demonstrate to the Conservancy's satisfaction that all other reasonable and/or feasible alternatives to the proposed use on Conservancy land have been exhausted. An applicant may be required to provide information demonstrating that alternatives were explored and rejected.

Application Completeness. The applicant must complete the required Special Use Request Application.

Legal Documents for Special Use Requests

Special Use requests will be granted based on the following terms with respect to lease, license, and easement documents:

- Use will be granted using a Conservancy drafted lease, license or easement.
- Evidence of insurance listing the State of California as additional insured will be provided by the applicant except in the following circumstances: (1) Use is a temporary use (see Section 2 above) and not of a hazardous nature; and (2) Use is requested by an adjoining property owner.
- Applicant will indemnify the State of California.
- A license, lease, easement, or "in-lieu" fee will be paid by the applicant (see Section 4 below).
- Applicant will pay any possessory interest tax, if applicable.
- Applicant shall provide and prepare all necessary plans, permits, materials, monitoring, and oversight required for drafting the legal document.

Delegation of Authority to Staff

Special Use requests are subject to Conservancy Board approval unless the use request is of a nature which is specifically delegated to staff.

Those requests requiring Board approval include:

1. All uses requiring that the Board make environmental findings pursuant to the California Environmental Quality Act (CEQA). These are uses of Conservancy land which are not categorically or statutorily exempt under CEQA but instead involve the adoption of a negative declaration or an environmental impact report;
2. All permanent uses. These are uses of Conservancy land granted under an easement;
3. All uses exceeding three years in duration. These are uses of Conservancy land granted under a lease or license; and
4. All uses that are precedent setting or involve unusual circumstances.

Those requests which are delegated to staff must meet the following three-pronged test:

1. The use qualifies for a statutory or categorical exemption under CEQA;

2. The use is consistent with past practices and past Board authorizations; and
3. The use is less than or equal to three years in duration.

Staff is required to report to the Board all Special Uses granted by staff. Such notification is required at the Board meeting and in the board book immediately following the grant of the Special Use request.

Notice Requirements

If staff proposes to authorize a use under its delegated authority which has the potential to affect the safety, habitability, or usability of neighboring properties or residences, staff will provide notice to the owner(s) of record and occupant(s) of the parcels which would be directly affected by such action by mail or posting 10 days prior to the grant of such lease or license.

Interested persons will have 10 days to comment on or object to the proposed special use, and staff will consider all comments and objections prior to making a final determination as to whether or not the proposed special use will be granted. The notice provided by the Conservancy will specify that any interested person commenting on or objecting to the proposed special use may request further notification of staff's final determination.

Those uses which are not within the Conservancy staff's delegated authority will be brought before the Board for review. In addition to the standard procedures for circulation of the Conservancy board meeting agenda, staff will provide notice to the owner(s) of record and occupant(s) of neighboring parcels by mail or posting 10 days prior to the grant of such lease, license, or easement. Any member of the public will have the opportunity to comment or object to the proposed special use during the Conservancy board meeting.

4. SPECIAL USE REQUEST FEES

The Conservancy may fix and collect fees for any services rendered by it. The amount of any fee may not exceed the reasonable costs of providing the services rendered by the Conservancy Government Code § 66908.1). The Conservancy generally does not charge fees for use requests from project partners or for projects which further the Conservancy's mission and programs. Occasionally, the Conservancy will allow a fee to be paid in the form of "in lieu" services from the special use applicant. The in-lieu requirement will be agreed to in writing before the special use of Conservancy property is approved.

The following fee structure sets forth the standard fees for special uses of Conservancy land. These fees may be subject to change if the Conservancy finds that the special use request will unusually impact or burden Conservancy staff time and resources. Staff time includes: (1) time spent reviewing, analyzing, and researching the Special Use Request Application, (2) CEQA review, (3) preparation of the appropriate legal document, and (4) preparation of materials for Board review.

In certain circumstances, where Conservancy staff determines that a Special Use request is unusual and particularly time-consuming, a deposit will be required of the applicant and retained by the Conservancy. Conservancy staff time will be billed against this deposit.

- **Temporary Uses**

- Individual access to adjoining Conservancy property: \$25.
- Commercial filming and photography: No location fee; \$100 License processing fee will be charged. *If extraordinary staff monitoring is deemed necessary, the licensee will pay an hourly rate for all staff time exceeding four hours.*
- *All other commercial uses: A minimum fee of \$100. The total fee will be the greater of either: 1) the minimum fee; or 2) 5% of gross event entry receipts (pro-rated for the approximate percentage of Conservancy land used).*

- **Short Term Uses**

- Individual access to adjoining or neighboring Conservancy property: \$100/month.
- Commercial filming and photography: No location fee; \$100 License processing fee will be charged. *If extraordinary staff monitoring is deemed necessary, the licensee will pay an hourly rate for all staff time exceeding four hours.*
- Commercial uses and projects not in furtherance of the Conservancy's mission and programs: the greater of \$1,500/month or 50% of gross receipts.
- Snow Storage: \$500 per winter season; may be reduced if suitable in-lieu services can also be provided.

- **Long Term Uses**

- Individual access to adjoining or neighboring Conservancy property: \$100/month
- Commercial Uses and projects not in furtherance of the Conservancy's mission and programs: the greater of \$1,500/month or 50% of gross receipts.
- Snow Storage: \$500 per winter season; may be reduced if suitable in-lieu services can also be provided.
- Groundwater contamination monitoring/cleanup: \$1,000/year

The following special uses will be handled as transfers of permanent or long term interests in real property in exchange for monetary consideration. *The Conservancy may seek the assistance of the Department of General Services, Real Estate Services Division, to review an appraisal for either of the following:*

- Long term licenses for installation of public utilities: compensation will be required based upon the transfer of the interests in property (a market estimate for the fair market value of the long term interest).
- All easements: compensation will be required based upon the transfer of the interests in property (a market estimate for the fair market value of the long-term interest).