

**STAFF REPORT
C01**

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04/05/19
PRC 5559.1
J. Toy

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

APPLICANT:

10:10 Holdings, LLC, a California Limited Liability Company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8569 Meeks Bay Avenue, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Removal and reconstruction/extension of an existing pier, relocation of an existing boat lift, and continued use and maintenance of one existing mooring buoy.

LEASE TERM:

10 years, beginning April 5, 2019.

CONSIDERATION:

\$1,243 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses of access, navigation, fishing and lake-related recreational uses.
- To avoid potential impacts to Tahoe yellow cress (TYC), ground construction activities and ground disturbance is not authorized between the surface elevation of Lake Tahoe and the toe of the upland slope when unsubmerged conditions are present. If construction activities landward of elevation 6,223 feet Lake Tahoe Datum are not completed by June 14, 2020, then the lessee shall

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stop work and contact Commission staff for further determination if a TYC survey will be required.

- The lease provides that the public will be allowed to pass and repass underneath the pier to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum.

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 Analysis:

On June 1, 2009, the Commission authorized a General Lease - Recreational Use for an existing pier, boat lift, and one mooring buoy to D.E. Tobie, Trustee of the D.E. Tobie Qualified Personal Residence Trust (Irrevocable) Dated January 3, 2005; Dorthy R. Tobie, Trustee of the Dorthy R. Tobie Qualified Personal Residence Trust (Irrevocable) Dated January 3, 2005; and Tobie Children's Enterprises, LP, a California Limited Partnership ([Item C32, June 1, 2009](#)). On January 10, 2018, upland ownership was transferred to 10:10 Holdings, LLC, a California Limited Liability Company. The lease expired on September 26, 2018.

The Applicant is now applying for a General Lease – Recreational Use for the proposed removal, reconstruction and 40-foot extension of the pier, relocation of a boat lift, and continued use and maintenance of the one existing mooring buoy. The proposed 145-foot pier will extend approximately to elevation 6219.4 feet Lake Tahoe Datum and will utilize the current piling row on the northerly side of the existing pier to form a single piling foundation. The southerly row of existing pilings will be removed from the pier; however, double piling supports will be placed under the proposed pierhead.

The project will be performed on-site with waterward access to the pier from a floating/amphibious barge and any upland access shall be limited to areas of existing access. All materials will be stored and transported to the site from the barge with measures taken to prevent any release into Lake Tahoe. Pilings will be installed with a drop hammer pile driver.

Construction will take place after all required approvals have been obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, Lahontan Regional Water Quality Control

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Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

Staff recommends the proposed lease begin on April 5, 2019, and that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,168 for the period beginning January 10, 2018, through April 4, 2019. ~~Staff also recommends the rental invoice issued to the former upland owner for the 2018—2019 lease year be waived, along with any penalties and interest.~~

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The facilities are used for the docking and mooring of boats and 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 immediate area of the pier is gently sloped with sand and boulders. The proposed pier will be built on pilings with a clearance in excess of 7 feet underneath the pier and over 14 feet between the pilings, providing public access for pedestrians and lake-related activities at varying water levels within the Public Trust easement. The buoy is located directly lakeward of the upland property and occupies a relatively small area of the lake. On June 21, 1977, the Tahoe Regional Planning Agency (TRPA) issued a permit for the buoy. The Applicant's TRPA permit is currently valid.

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, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

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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, and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. On October 24, 2018, the TRPA Governing Board certified a Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
3. **Pier Rebuild and Extension:** Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).
4. **One Existing Mooring Buoy:** Staff recommends that the Commission find that this activity 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.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Pier Rebuild and Extension: 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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One Existing Mooring Buoy: 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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that ~~the waiver of penalty and interest; and~~ issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

- ~~1. Waive annual rent, penalty, and interest due for the period of September 27, 2018, through September 26, 2019, issued to D.E. Tobie, Trustee of the D.E. Tobie Qualified Personal Residence Trust (Irrevocable) Dated January 3, 2005; Dorothy R. Tobie, Trustee of the Dorothy R. Tobie Qualified Personal Residence Trust (Irrevocable) Dated January 3, 2005; and Tobie Children's Enterprises, LP, a California Limited Partnership.~~
- 2.1. Authorize acceptance of compensation from the Applicant in the amount of \$1,168 for unauthorized occupation of State land for the period beginning January 10, 2018, through April 4, 2019.
- 3.2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 5, 2019, for a term of 10 years, for removal and reconstruction/extension of an existing pier, relocation of an existing boat lift, and continued use and maintenance of one existing mooring buoy, 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 \$1,243, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5559.1

LAND DESCRIPTION

Two parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 5 fractional Section 29 Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying a proposed pier, boat lift, one catwalk and stairs lying adjacent to those parcels as described in that Grant Deed recorded June 22, 2005 as Document 2005-0050940 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

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

PARCEL 2 – BUOY

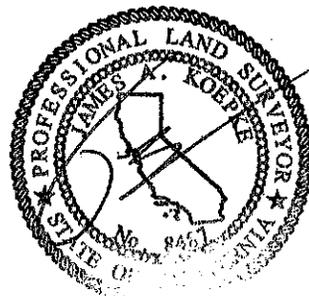
One circular parcel of land, being 50 feet in diameter, underlying one existing buoy lying adjacent to said parcel.

Accompanying plat is hereby made part of this description.

This description is based on Applicant provided design plans by Sagan Design Group, Thompson & Furumoto, Inc., dated August 16, 2018, for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

END OF DESCRIPTION

Prepared February 22, 2019
by The California State Lands Commission Boundary Unit.



NO SCALE

L A K E

T A H O E

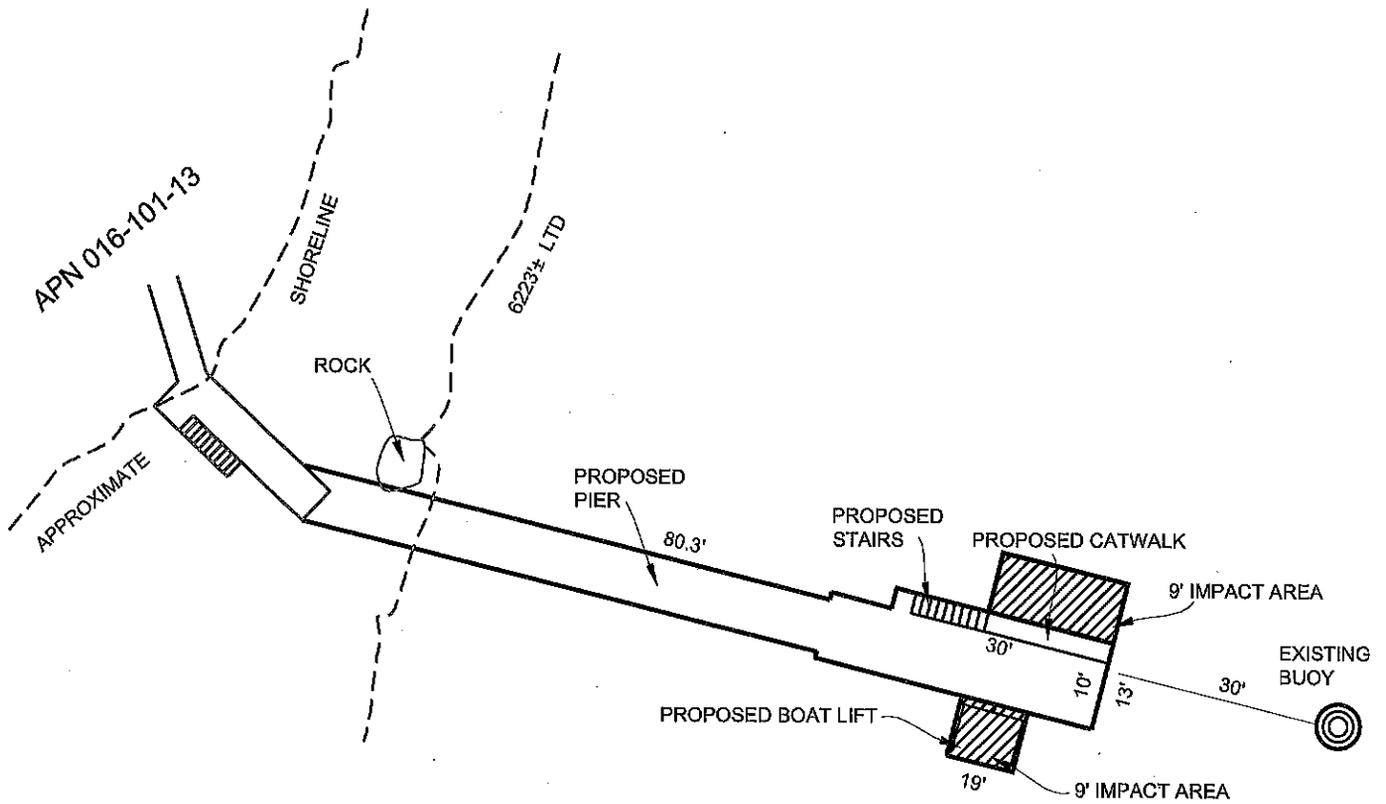


EXHIBIT A

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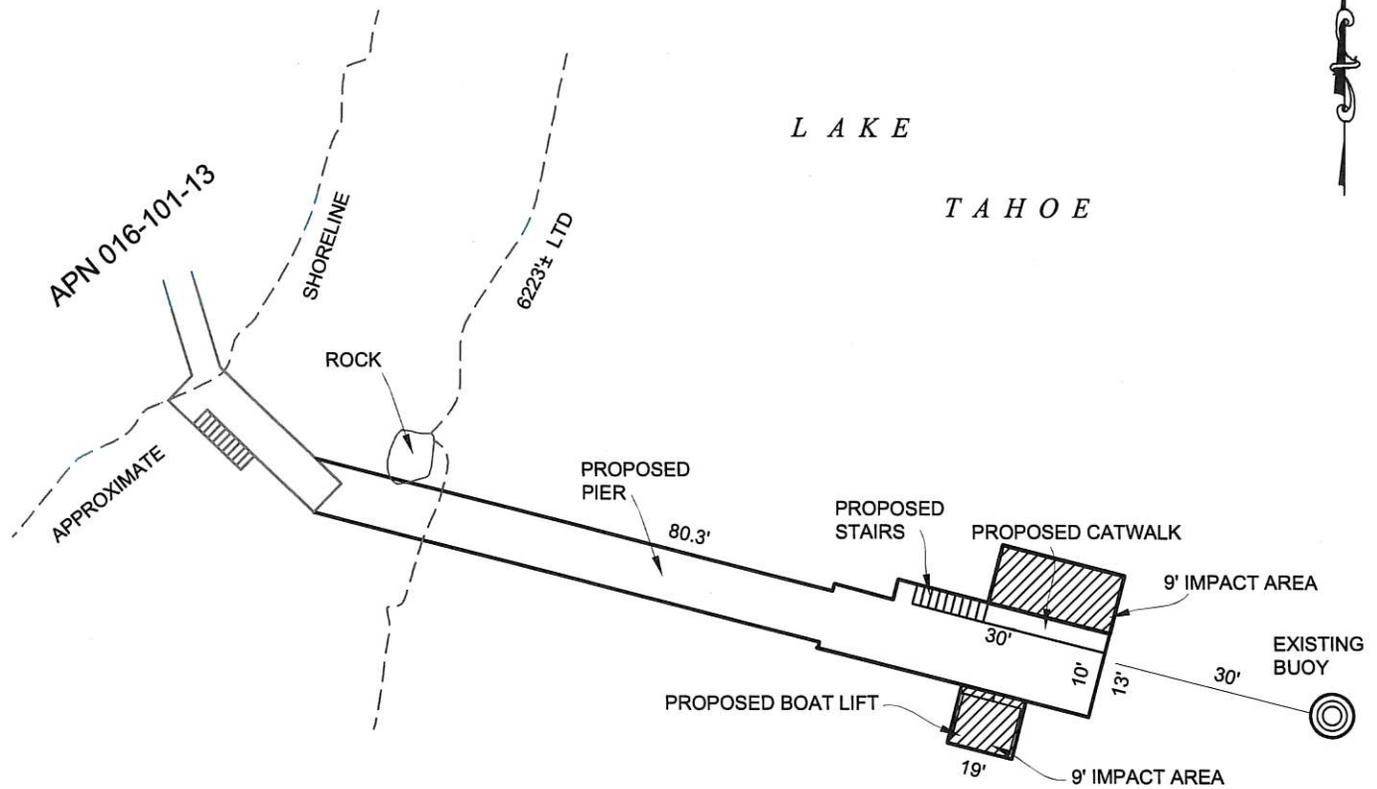
LAND DESCRIPTION PLAT
PRC 5559,1, 10:10 HOLDINGS, LLC
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

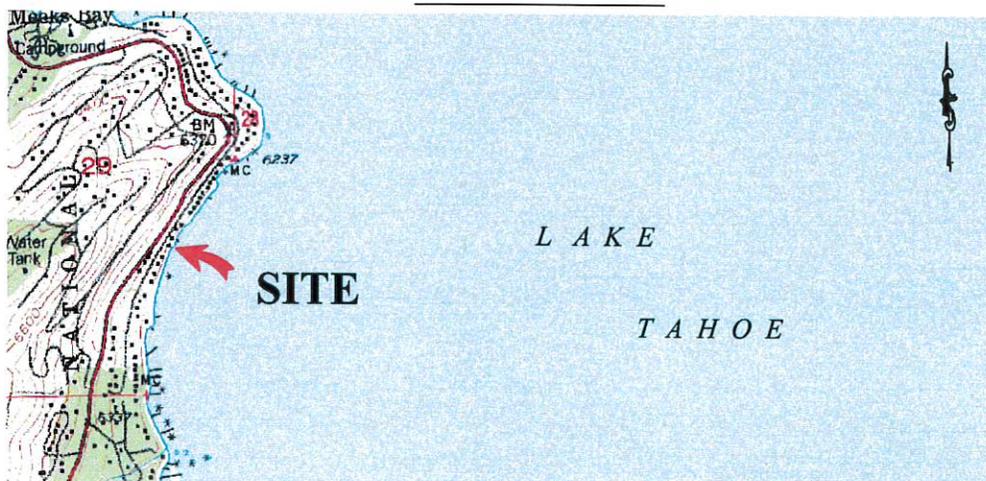
SITE



8569 MEEKS BAY AVE., NEAR MEEKS BAY

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 5559.1
 10:10 HOLDINGS, LLC
 APN 016-101-13
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



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