

**STAFF REPORT
C13**

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04/05/19
PRC 2307.1
J. Toy

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Andre E. Maginot and Nina S. Yoshpe, as Trustees of the Andre E. Maginot and Nina S. Yoshpe Living Trust Dated August 11, 1988

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5440 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boat lift, and two mooring buoys.

LEASE TERM:

10 years, beginning August 31, 2018.

CONSIDERATION:

\$1,427 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.
- Lessee shall provide proof of a Tahoe Regional Planning Agency (TRPA) buoy permit or proof that unpermitted buoys have been removed by October 23, 2020.
- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining

STAFF REPORT NO. C13 (CONT'D)

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, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On June 23, 2011, the Commission authorized a Recreational Pier Lease for an existing pier, boat lift, and two mooring buoys to Andre E. Maginot and Nina S. Yoshpe, as Trustees of the Andre E. Maginot and Nina S. Yoshpe Living Trust Dated August 11, 1988 ([Item C07, June 23, 2011](#)). The lease expired on August 30, 2018. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing facilities.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained, 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 subject facilities have existed for many years at this location. The pier is built on pilings, providing public access for pedestrians and lake-related activities at varying water levels underneath the pier. The immediate area of the existing pier consists of rocks and is gently sloped. The two buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

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

STAFF REPORT NO. **C13** (CONT'D)

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.

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 new Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
3. 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 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:

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 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

STAFF REPORT NO. **C13** (CONT'D)

lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 31, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier, boat lift, and two 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 \$1,427, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 2307.1

LAND DESCRIPTION

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 fractional Section 22 Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier and boat lift lying adjacent to that parcel as described in Exhibit "A" of that Deed of Reconveyance recorded August 8, 2018 as Document Number 2018-0056997-00 in Official Records of said County.

ALSO 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.

PARCELS 2, 3, – 2 BUOYS

Two circular parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared November 29, 2018 by The California State Lands Commission Boundary Unit.



NO SCALE

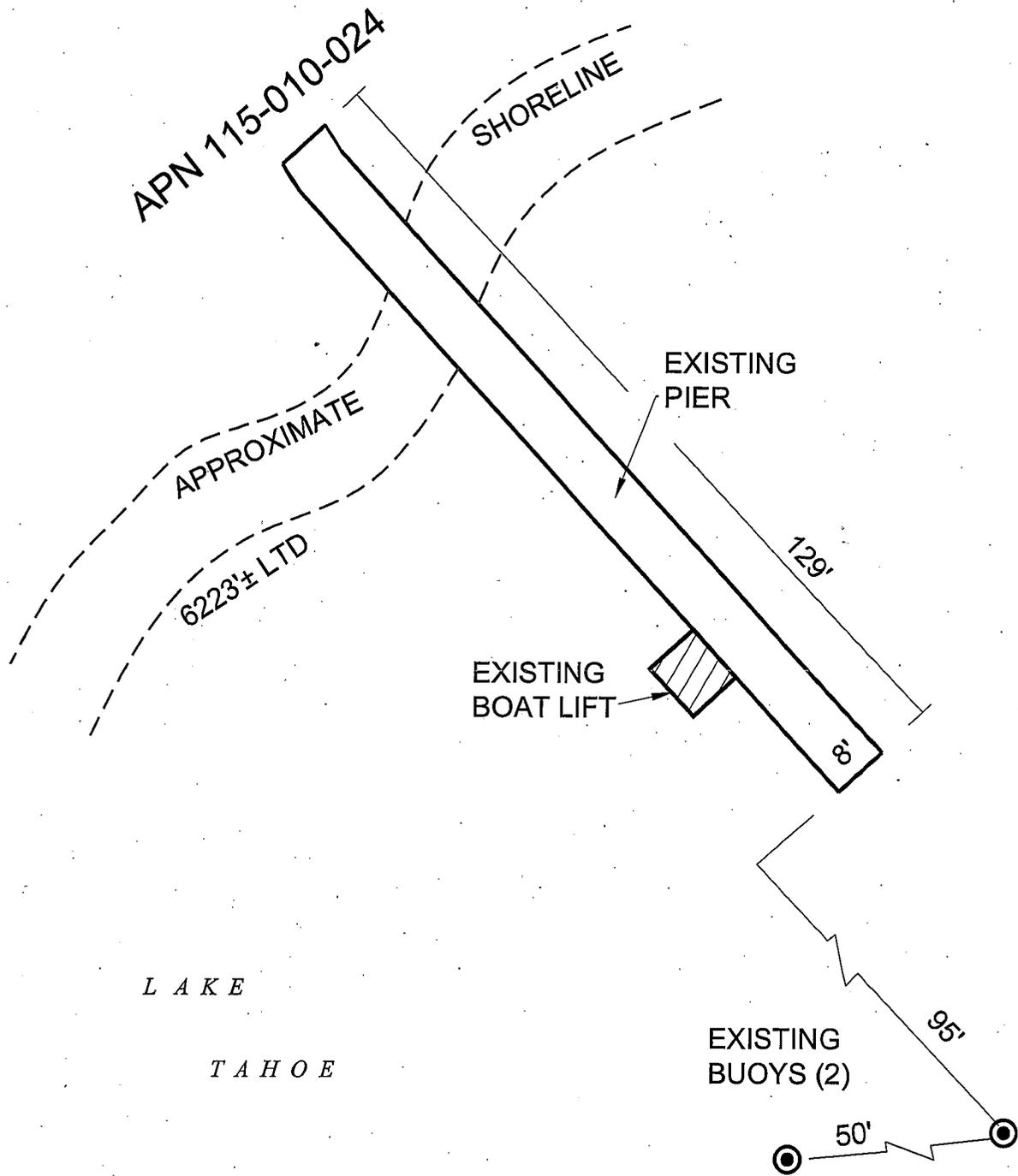


EXHIBIT A

Page 2 of 2

MJJ 11/29/18

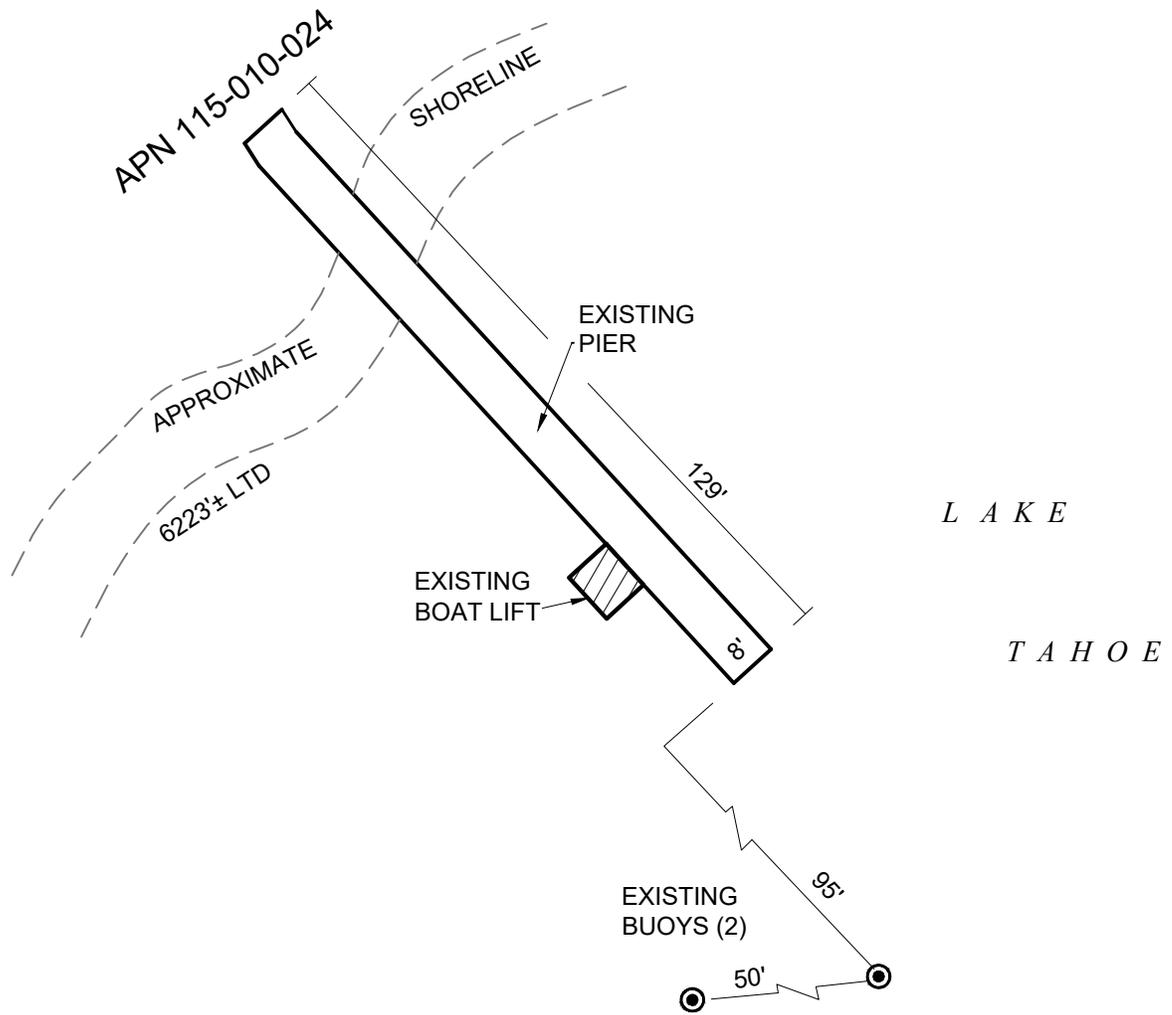
LAND DESCRIPTION PLAT
 PRC 2307.1, MAGINOT TRUST
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



5440 NORTH LAKE BLVD., CARNELIAN BAY

NO SCALE

LOCATION

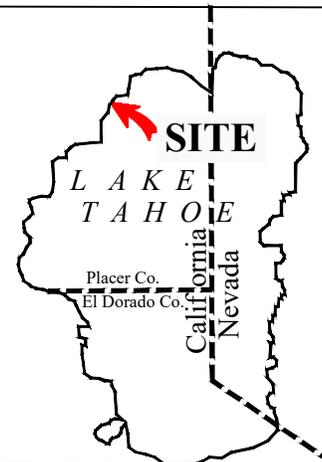


MAP SOURCE: USGS QUAD

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 2307.1
 MAGINOT TRUST
 APN 115-010-024
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJL 11/29/18