

**STAFF REPORT
C16**

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04/05/19
PRC 4869.1
S. Avila

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Warren E. Spieker, Jr., Trustee of the Spieker 1991 Residential Trust No. 1 U/A/D November 21, 1991; and Warren E. Spieker, Jr., Trustee of the Spieker 2010 Irrevocable Children’s Trust

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 251 and 255 Paradise Flat Lane, near Rubicon Bay, El Dorado County.

AUTHORIZED USE:

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

LEASE TERM:

10 years beginning July 10, 2019.

CONSIDERATION:

\$2,312 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 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 authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

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- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing and lake-related recreational uses.

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 August 11, 2009, the Commission authorized a 10-year Recreational Pier Lease to Warren E. Spieker, Jr., Trustee of the Spieker 1991 Residential Trust No. 1 U/A/D November 21, 1991 for an existing pier, boat lift, and two mooring buoys in Lake Tahoe adjacent to 251 Paradise Flat Lane ([Item C05, August 11, 2009](#)). The lease will expire on July 9, 2019. On April 24, 2012, ownership of the neighboring littoral parcel at 255 Paradise Flat Lane transferred to Warren E. Spieker, Jr., Trustee of the Spieker 2010 Irrevocable Children's Trust.

The Applicant is applying for a General Lease – Recreational Use, for the continued use and maintenance of the existing pier, boat lift, and two mooring buoys adjacent to 251 Paradise Flat Lane, and for the use and maintenance of two previously unauthorized existing mooring buoys adjacent to 255 Paradise Flat Lane.

On October 21, 2009, TRPA issued a permit for the two mooring buoys adjacent to 255 Paradise Flat Lane. This permit and others from the same time period were based on a Final EIS and Ordinance Amendments adopted by TRPA in October 2008. In September 2010, the U.S. District Court invalidated the Final EIS and nullified the Amendments. On October 24, 2018, the TRPA's Governing Board certified a new Final EIS and adopted Lake Tahoe Shorezone Ordinance Amendments. TRPA has indicated that it will recognize the previously issued permits and begin reissuing such permits in March 2019.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The pier and mooring buoys are used for the docking and mooring of boats. 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).

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The pier and mooring buoys have existed for many years at this location. The pier is built on single pilings with the immediate area of the pier being flat with sand and pebbles that enables easy public access along the Public Trust easement. The topography and location of upland structures provides access to the pier and public access for pedestrians and lake-related activities at varying water levels underneath the pier. The 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 and 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 and restore the lease premises to their original condition.

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 will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the Public Trust Doctrine; and is 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 land 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. 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,

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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 the 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:

Authorize issuance of a General Lease – Recreational Use to the Applicant; beginning July 10, 2019, for a term of 10 years, for the continued use and maintenance of an existing pier, boat lift, and two mooring buoys previously authorized by the Commission and use and maintenance of two existing mooring buoys not previously authorized by the Commission, 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 \$2,312, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4869.1

LAND DESCRIPTION

Five parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 fractional Section 4, Township 13 North, Range 17 East, MDM., as shown on Official Government Township Plat approved May 19, 1875, County of El Dorado, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, boat lift and catwalk lying adjacent to that parcel as described in Exhibit A of that Grant Deed recorded April 24, 2012 as Document Number 2012-0019615 and parcels described in Exhibit A of that Individual Grant Deed recorded February 21, 1992, as Document Number 10408 of Official Records of said County.

TOGETHER WITH any applicable use area(s).

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

PARCEL 2 - 5 – 4 BUOYS

Four circular parcels of land, being 50 feet in diameter, underlying four existing buoys lying adjacent to said parcel.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared February 27, 2019 by the California State Lands Commission Boundary Unit.



NO SCALE

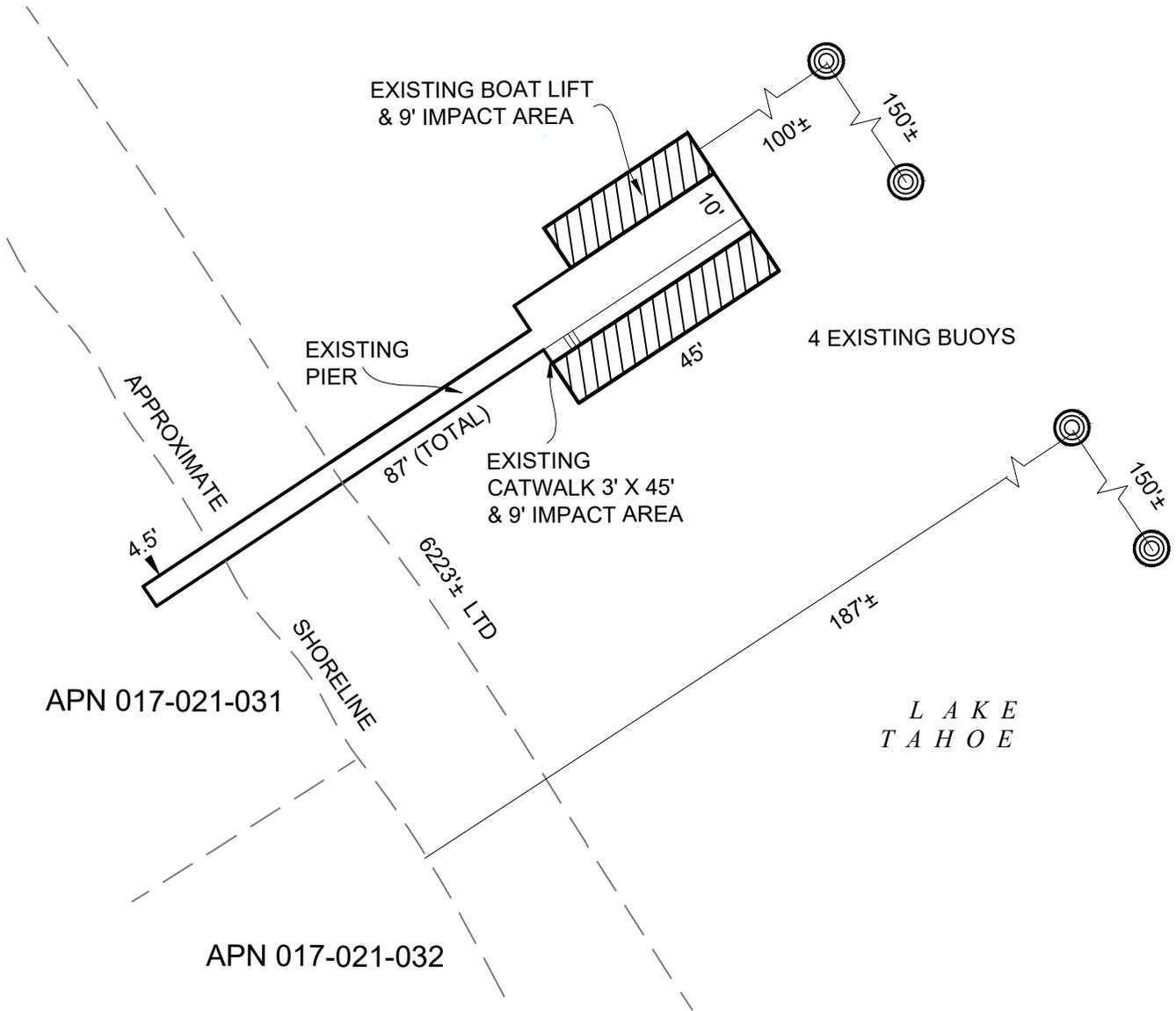


EXHIBIT A

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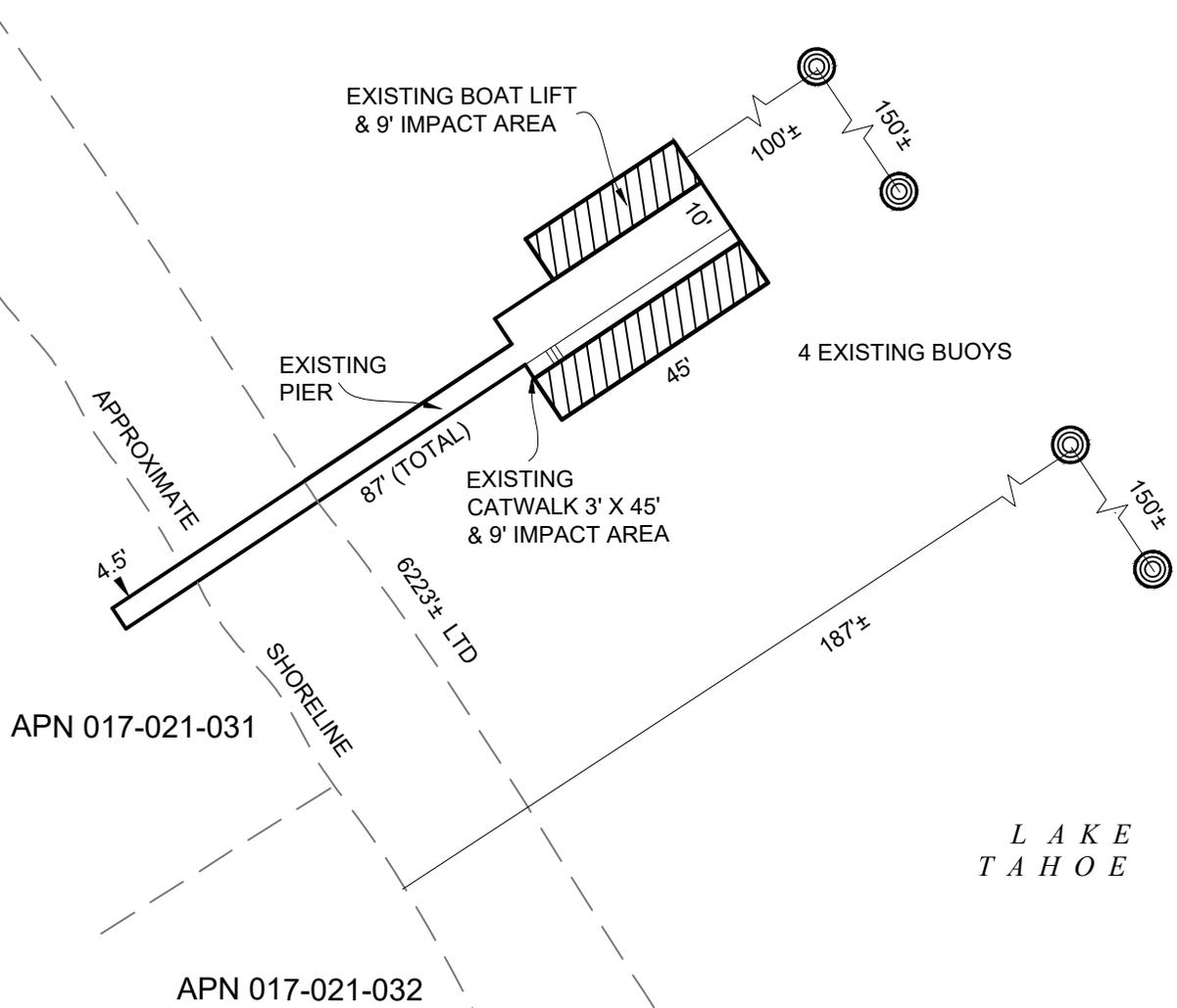
MJJ 2/12/19

LAND DESCRIPTION PLAT
 PRC 4869.1, SPIEKER TRUSTS
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



SITE



251 & 255 PARADISE FLAT LANE, NEAR RUBICON BAY

NO SCALE

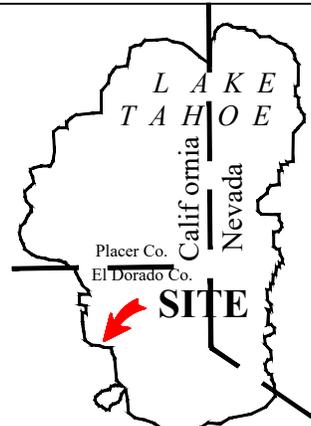
LOCATION



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 4869.1
SPIEKER. TRUSTS
APN 017-021-031,032
GENERAL LEASE -
RECREATIONAL USE
EL DORADO COUNTY



MJJ 2/11/19