

**CALENDAR ITEM
C41**

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05/24/12
PRC 4057.1
B. Terry

**TERMINATION OF A RECREATIONAL PIER LEASE AND ISSUANCE OF A
GENERAL LEASE – RECREATIONAL USE**

LESSEES:

Albo Family Limited Partnership, and Gail Forbes, et al.

APPLICANTS:

William F. Cronk III and Janet M. Cronk, Co-Trustees of the Cronk Revocable Trust, dated December 30, 1981

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2010 West Lake Boulevard, near Tahoe City, Placer County.

AUTHORIZED USE:

Continued use and maintenance of two existing mooring buoys previously authorized by the Commission, and the reconstruction and expansion of an existing pier, removal of 24 existing double pilings and replacement with 20 steel pilings and an adjustable catwalk.

LEASE TERM:

10 years, beginning May 24, 2012.

CONSIDERATION:

\$2,371 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in the amount of no less than \$1,000,000.

Other:

1. The proposed lease contains a provision requiring the Applicant(s) to obtain authorization from the Tahoe Regional Planning Agency (TRPA) for the mooring buoy(s) within two years after the adoption

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of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. This is a continuation of the process the Commission used from approximately 1995 to October 2008 when TRPA adopted an FEIS and Ordinance Amendments supported by the FEIS. In September 2010, the U.S. District Court invalidated the FEIS and nullified the Amendments. When additional information is available, Commission staff will advise the Commission on any suggested modifications to the process used by the Commission pending resolution of the TRPA FEIS and amended ordinance issues.

2. The lease provides that the Lessee shall install steps on either side of the proposed pier or notch design within the Public Trust Easement below elevation 6228.75 Lake Tahoe Datum (LTD) or access above the toe of the pier in order to allow the public to pass and repass over the pier to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 LTD.
3. The lease includes a provision for the execution of a Memorandum of Lease and recordation at the Placer County Recorder.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland adjoining the lease premises.
2. On February 2, 2004, the Commission approved a 10-year Recreational Pier Lease with Albo Family Limited Partnership, and Gail Forbes, et al. That lease will expire on January 31, 2014. On April 20, 2005, ownership of the upland parcel was deeded to William F. Cronk III and Janet M. Cronk, Co-Trustees of the Cronk Revocable Trust, dated December 30, 1981. Applicants are now applying for a new General Lease – Recreational Use. Staff is recommending termination of the existing lease because the Lessee cannot be located for execution of a lease quitclaim deed.
3. The existing pier is approximately 166 linear feet long with 24 double pilings. The Applicants are proposing to reconstruct and expand the existing pier to 189 linear feet and replace 24 existing double pilings with 20 steel pilings. The proposed pier will have a pierhead of 10 feet x 40 feet with an adjustable catwalk. The purpose of the reconstruction and expansion is to replace a decaying pier and expand to the maximum depth allowable under the TRPA ordinances. That depth is elevation 6,219 feet, Lake Tahoe Datum. The Applicant has agreed to provide steps on either

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side of the proposed pier to allow for the public to pass and repass over the pier below the high water mark, elevation 6,223 feet LTD in order to provide continuous public access within the Public Trust E asement.

4. The entire proposed project will be constructed from the Lake via barge. The existing pier will be removed and the pilings will be pulled where possible and cut flush with the lake bottom if pulling is infeasible. Construction is to be completed by April 30, 2014.
5. The application submitted on January 23, 2012 by the Applicant included a request to include a third unauthorized buoy in the new lease on the basis that TRPA issued a buoy permit in October 2009 approving more than two buoys per littoral parcel under the new "grandfather clause" adopted by TRPA in 2008. As background, in 2008, TRPA adopted new shorezone ordinances regarding existing mooring buoys which allowed TRPA to issue a permit for a third private buoy owned by a single parcel littoral owner if it could be verified that it existed prior to a certain historic date. TRPA began permitting a third "grandfathered" buoy even though the buoy owners had not obtained authorization from the Commission for the use of State Lands. Commission staff commented to TRPA several times prior to adoption of this ordinance that there had been no analysis of the need for a third buoy and the ordinance was giving recognition for unauthorized buoys that if they were to be placed as new would not qualify for a permit under the 2008 and pre-2008 Code of Ordinances, which allowed only two buoys per single littoral parcel. In 2010, permits issued, as a result of the adoption of the 2008 TRPA ordinances, were found to be invalid by the U.S. District Court. Their invalidity was upheld in the 9th Circuit U.S. Court of Appeals.

On May 9, 2012, staff wrote to the Applicant and their consultant that we could not recommend including the third buoy in the new lease because of the following information. The Commission's records indicate that staff was unaware of buoys offshore of the littoral parcel as far back as the first lease issued in 1968 for the construction of a pier. In 1999, prior littoral owners requested a lease for three existing unauthorized buoys along with their existing pier. At that time, Commission staff informed the owners that staff would not recommend a lease for more than two existing buoys because it would be in conflict with TRPA ordinances allowing only two buoys offshore of a single littoral parcel. In a letter dated October 29, 1999, staff asked the owners to remove the third buoy. Finally in 2001, the owners executed a new 10-year lease which authorized two buoys and the pier. Staff believed that the third buoy had been removed.

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TRPA is now operating under the pre-2008 Code of Ordinances which does not allow more than two private buoys per littoral parcel. As in 1999, recommending approval for a third buoy would be in direct conflict with the current TRPA Code of Ordinances and the Commission's practice.

6. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law became effective January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission "shall charge rent for a private recreational pier constructed on state lands." The law provides for two exceptions to the imposition of rent. Those exceptions are for:
 - A. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and
 - B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

Because the application and application fees were not submitted to the Commission prior to March 31, 2011, the lease does not meet the statutory requirements for an exception to recently-enacted changes to Section 6503.5 of the Public Resources Code.

7. **Termination of Existing Lease:** The staff recommends that the Commission find that the subject lease termination does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

8. **Two Mooring Buoys:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. For the existing facilities, the project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

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9. **Pier Reconstruction and Expansion:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. For the proposed pier expansion, the project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

10. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

Tahoe Regional Planning Agency

FURTHER APPROVALS REQUIRED:

U.S. Army Corps of Engineers
California Regional Water Quality Control Board
California Department of Fish and Game

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Lease Termination: Find that the subject lease termination is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Two Mooring Buoys: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title

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14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Pier Reconstruction and Expansion: 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).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize termination effective May 23, 2012, of Lease No. PRC 4057.9, a Recreational Pier Lease, issued to Albo Family Limited Partnership, and Gail Forbes, et al. and authorized by the Commission on February 2, 2004.

Authorize Issuance of a General Lease – Recreational Use to William F. Cronk III and Janet M. Cronk, Co-Trustees of the Cronk Revocable Trust, dated December 30, 1981, beginning May 24 2012, for a term of 10 years, for the continued use and maintenance of two existing mooring buoys previously authorized by the Commission, and the reconstruction and expansion of an existing pier, removal of 24 existing double pilings and replacement with 20 steel pilings and an adjustable catwalk 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 \$2,371 with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; and liability insurance with coverage of no less than \$1,000,000.

EXHIBIT A

PRC 4057.1

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 24, Township 15 North, Range 16 East, M.D.B.&M., as shown on Official Government Township Plat approved December 20, 1865, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying a proposed pier lying adjacent to those parcels described in Grant Deed recorded April 29, 2005 as Document Number 2005-0053249 in Official Records of said County.

TOGETHER WITH a ten foot use area.

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

PARCEL 2 & 3 – BUOYS

Two circular parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Grant Deed recorded April 29, 2005 as Document Number 2005-0053249 in Official Records of said County.

Accompanying plat is hereby made part of this description.

This description is based on Applicant provided design plans, by Waldon West Design dated November 13, 2011, 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 05/01/2012 by the California State Lands Commission Boundary Unit.



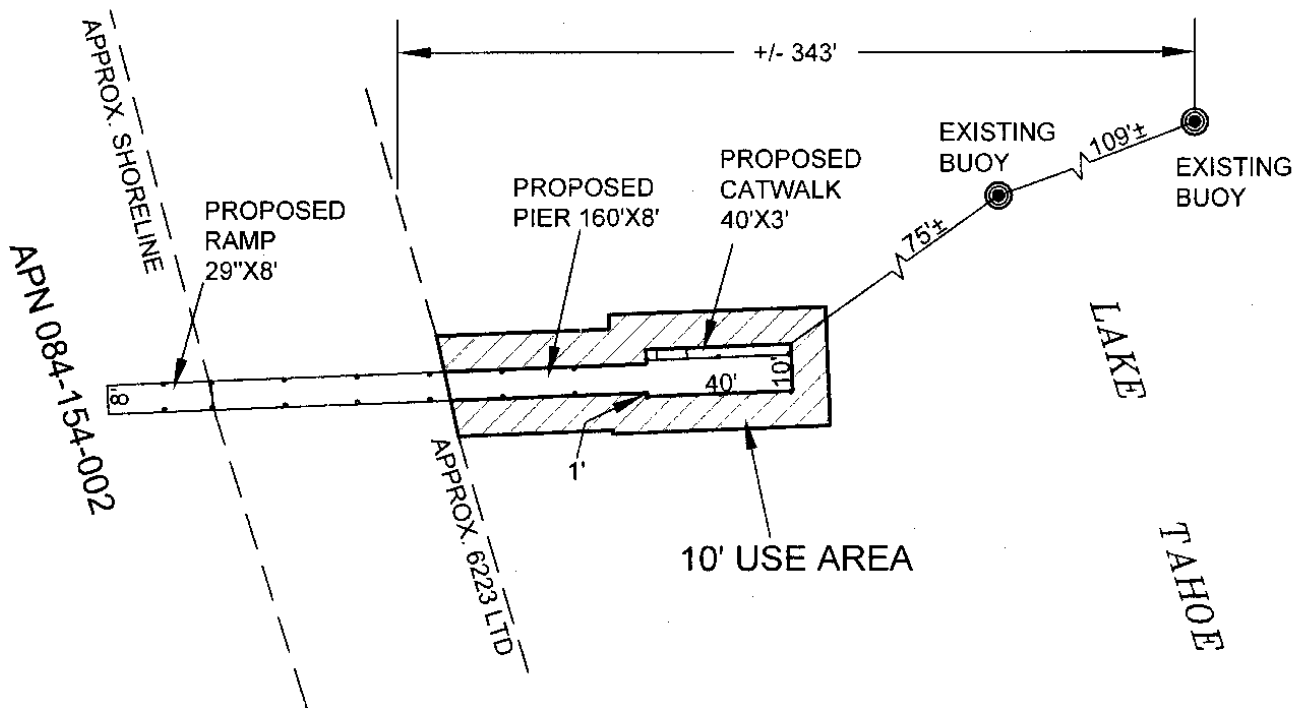


EXHIBIT A

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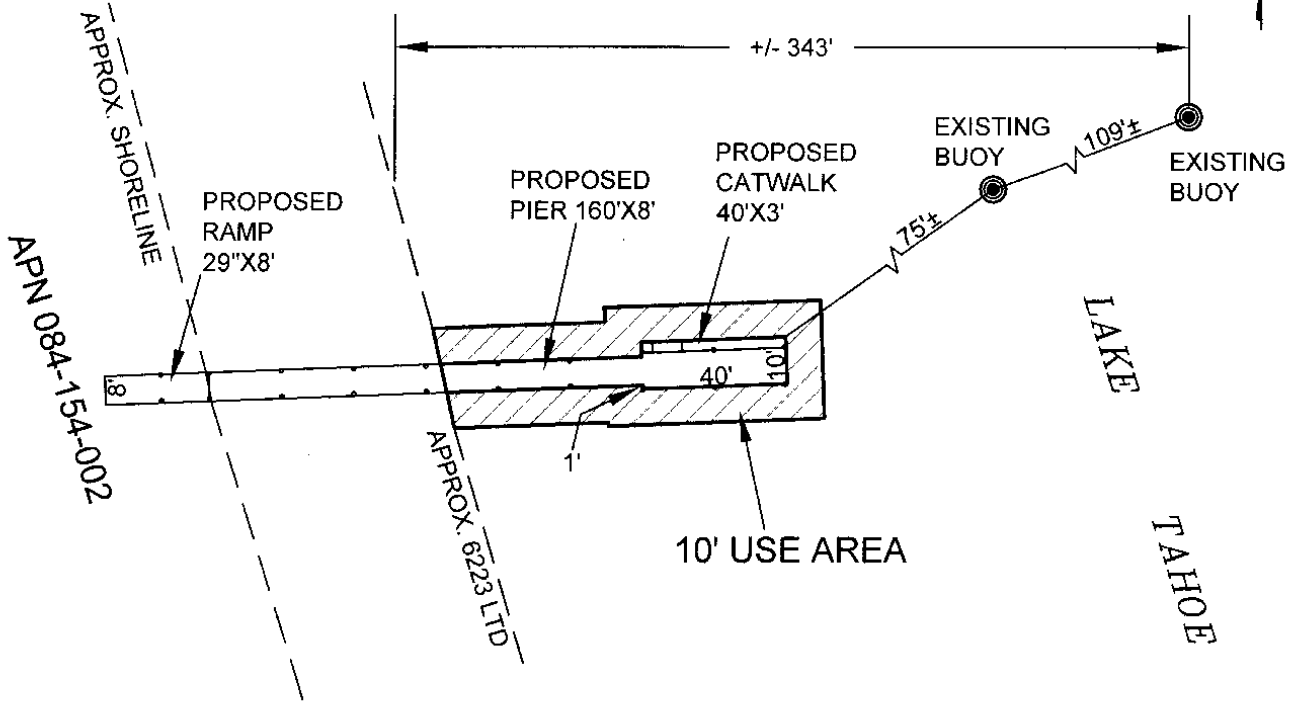
LAND DESCRIPTION PLAT
PRC 4057.1, WILLIAM & JANET CRONK
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

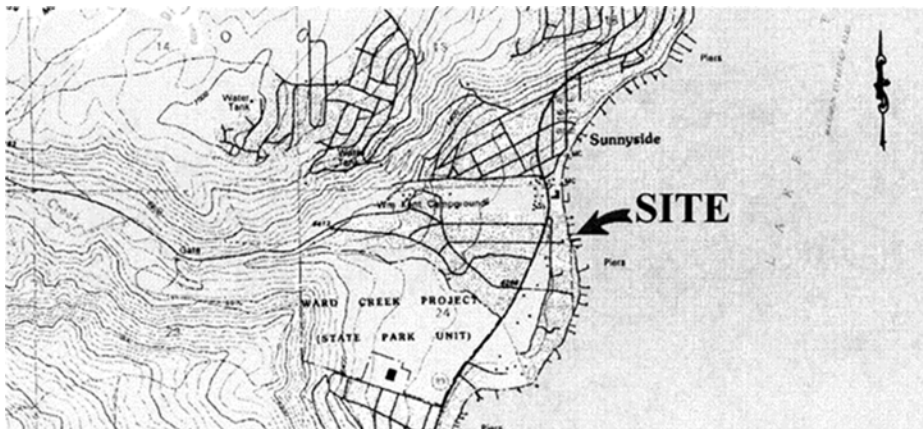
SITE



2010 WEST LAKE BOULEVARD, TAHOE CITY

NO SCALE

LOCATION

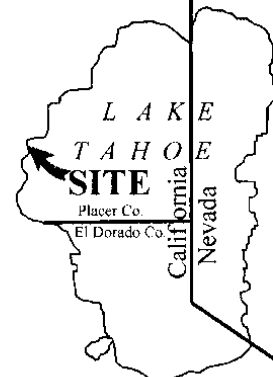


MAP SOURCE: USGS QUAD

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 4057.1
 WILLIAM & JANET CRONK
 APN 084-154-002
 GENERAL LEASE-
 RECREATIONAL USE
 PLACER COUNTY



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