

**CALENDAR ITEM
C03**

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04/05/16
PRC 7973.1
M.J. Columbus

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

LESSEE:

Christopher J. Cocchi and Kenneth R. Carlson

APPLICANT:

Lawrence R. Whitman and Jennifer A. Whitman

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Donner Lake, adjacent to 14254 South Shore Drive, near the town of Truckee, Nevada County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier.

LEASE TERM:

10 years beginning April 5, 2016.

CONSIDERATION:

\$229 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.

STAFF ANALYSIS AND RECOMMENDATION:

Statutory Authority:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

The subject pier is for the docking and mooring of boats. Recreational boating is water-dependent and is generally consistent with the common law public trust doctrine. The California Legislature has identified private

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recreational boating facilities as an authorized use of public trust lands (Pub. Resources Code, § 6503.5). The subject facilities are privately owned and maintained. The adjacent upland parcel is privately owned and developed with a residence.

The lease includes certain provisions protecting the public use of the proposed lease area, including a lease term limited to 10 years, a non-exclusive use provision, and a reservation to the people of the State of an easement for access to and across the lease area. The pier is built on pilings, meaning the public may navigate next to, and at certain water levels, under the pier. This construction also permits lateral access across the beach area. The proposed lease will allow the public to walk or otherwise use the beach and shore area below high water for uses consistent with the public trust easement. The pier is passable in the public trust easement closer to low water.

The subject facilities have existed for many years at this location. The subject facilities do not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. Upon termination of the lease, the Lessee may be required to remove all improvements and restore the lease premises to their original condition. Based on the foregoing, Commission staff believes that the pier will not substantially interfere with public trust needs at this time and at this location.

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, Commission staff believes the issuance of this lease is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On June 28, 2007, the Commission authorized a Recreational Pier Lease to Christopher J. Cocchi and Kenneth R. Carlson. That lease expires on May 31, 2017. On February 14, 2012, the upland was deeded to Lawrence R. Whitman and Jennifer A. Whitman. The Applicant is now applying for a General Lease – Recreational Use.

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3. Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland property and facility without executing a quitclaim deed.
4. Staff recommends that the Commission accept compensation in the amount of \$1,661 for the unauthorized occupation of State land for the period beginning February 14, 2012, when the Applicant took ownership, through April 4, 2016.
5. 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.
6. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

7. The staff recommends that the Commission find that issuance of the lease 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.

8. 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.

EXHIBITS:

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

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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, is consistent with the common law public trust doctrine, and is in the best interests of the State.

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:

1. Authorize termination, effective April 4, 2016, of Lease No. PRC 7973.9, a Recreational Pier Lease, issued to Christopher J. Cocchi and Kenneth R. Carlson.
2. Authorize acceptance of compensation in the amount of \$1,661 for unauthorized occupation of State lands, for the period beginning February 14, 2012, through April 4, 2016.
3. Authorize issuance of a General Lease – Recreational Use to Lawrence R. Whitman and Jennifer A. Whitman beginning April 5, 2016, for a term of 10 years, for the continued use and maintenance of an existing pier 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 \$229, with an annual Consumer Price Index adjustment; and liability insurance with coverage in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 7973.1

LAND DESCRIPTION

A parcel of submerged land situate in the bed of Donner Lake, lying adjacent to Lot 7 fractional Section 13, Township 17 North, Range 15 East, MDM., as shown on Official Government Township Plat approved April 10, 1867, County of Nevada, State of California, and more particularly described as follows:

PARCEL 1- PIER

All those lands underlying an existing pier lying adjacent to that lot described in Exhibit "A" of that Grant Deed recorded February 14, 2012 in Document Number 20120004041 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

EXCEPTING THEREFROM any portion(s) lying landward of elevation 5933.8 feet on the shoreline of said Donner Lake.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared December 14, 2015 by the California State Lands Commission Boundary Unit.





D O N N E R L A K E

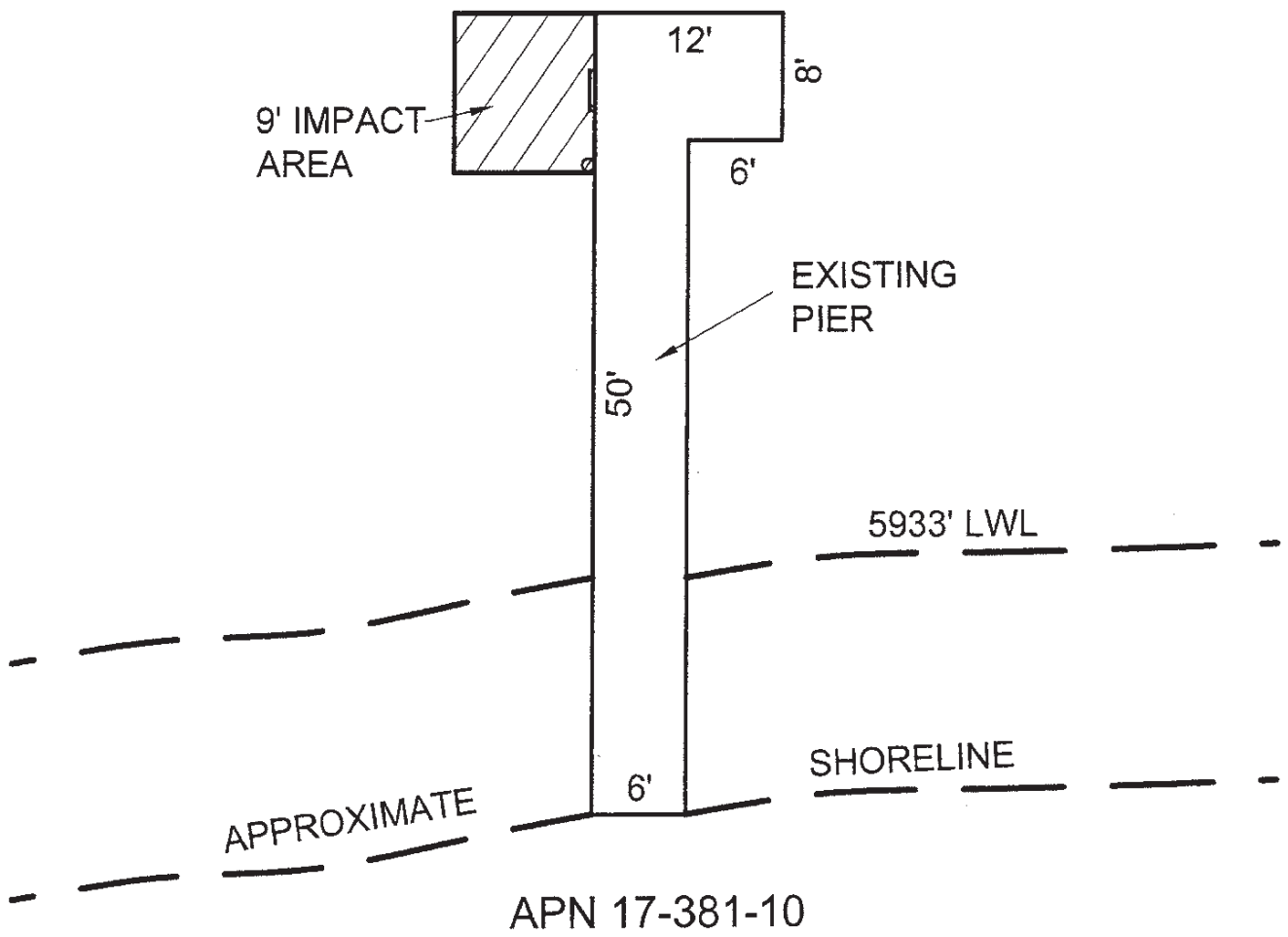


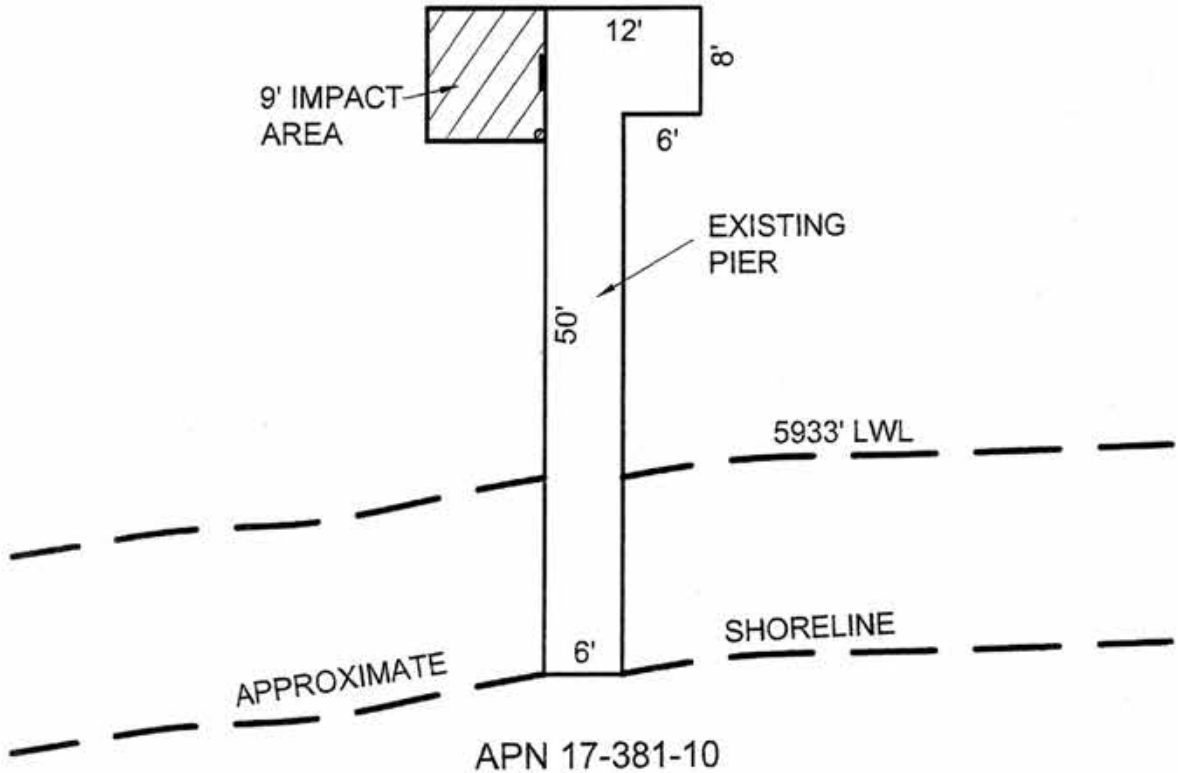
EXHIBIT A



NO SCALE

SITE

DONNER LAKE



14254 SOUTH SHORE DRIVE, NEAR TRUCKEE

NO SCALE

LOCATION

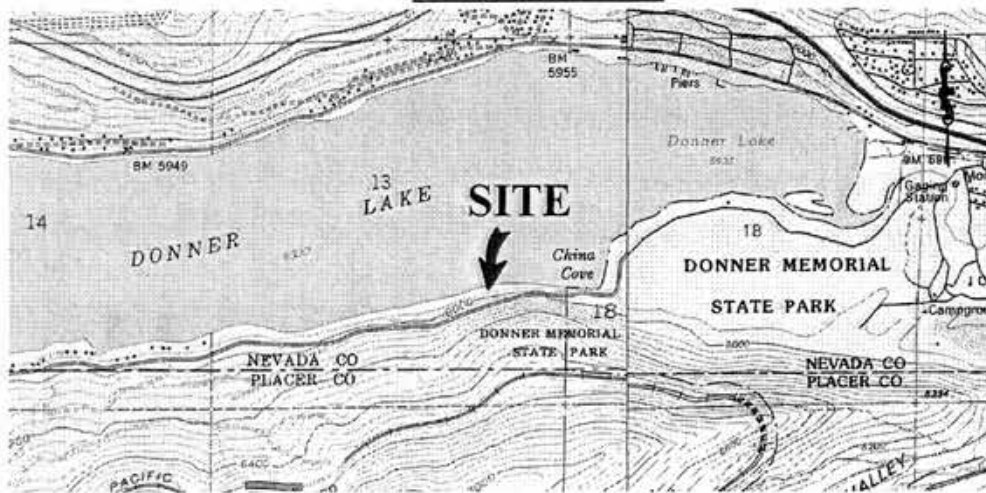


Exhibit B

PRC 7973.1
 WHITMAN
 APN 17-381-10
 GENERAL LEASE -
 RECREATIONAL USE
 NEVADA COUNTY



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.