

**CALENDAR ITEM
C15**

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04/05/16
W 21450
M. Schroeder

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

John Brockway Metcalf

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 9031 Lupine Way, city of South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Use and maintenance of an existing pier and two mooring buoys not previously authorized by the Commission.

LEASE TERM:

10 years, beginning April 5, 2016.

CONSIDERATION:

\$1,277 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.

If Lessee does not have valid Tahoe Regional Planning Agency (TRPA) buoy permits, Lessee is required to obtain such authorization for the mooring buoys within two years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such authorization within the time limit, they must remove the buoys.

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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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 facilities 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 (Public Resources Code section 6503.5).

The lease includes 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 or walk next to, and at certain water levels, under the pier. 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 subject facilities have existed for many years at this location. The lease does not alienate the State's fee simple interest or permanently impair public rights. Upon termination of the lease, the Lessee may be required to remove all improvements and restore the lease premises to their original conditions. Based on the foregoing, Commission staff believes that the pier will not substantially interfere with public trust needs at this location, at this time, and for the foreseeable term of the proposed lease. The two mooring buoys occupy a relatively small area of the lake. Commission staff believes the mooring buoys do 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 consistent with the common law public trust doctrine and in the best interests of the State.

CALENDAR ITEM NO. **C15** (CONT'D)

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of an existing pier and three mooring buoys not previously authorized by the Commission. The pier was constructed in 1948 and permitted by the U.S. Army Corps of Engineers in 1951. The Applicant’s mooring buoys have been in Lake Tahoe for many years, and in their current location since approximately 1968 as determined by the U.S. Army Corps of Engineers in a “grandfathered” status letter dated December 2, 2014.
3. The Applicant provided a copy of buoy permits for three buoys issued by TRPA in September 2009 under the “grandfather clause” of the now vacated TRPA shorezone ordinances adopted by TRPA in 2008.
4. Prior to 2008, TRPA ordinances allowed only two existing private mooring buoys per littoral parcel. TRPA adopted new shorezone ordinances in 2008 which allowed permitting of up to three existing private mooring buoys located adjacent to a lakefront parcel if the owner could verify that the third buoy had been placed in the lake prior to 1972, or had an existing valid lease for a third buoy from the Commission, or a valid permit from the U.S. Army Corps of Engineers. Commission staff commented to TRPA several times prior to adoption of the 2008 TRPA shorezone ordinances that there was no analysis of the need for a third buoy and the ordinance was giving recognition to previously unpermissible buoys. In 2010, the 2008 TRPA shorezone ordinances and the buoy permits issued under them were found to be invalid by the U.S. District Court. This decision was upheld by the 9th Circuit U.S. Court of Appeals.
5. TRPA is now operating under the pre-2008 Code of Ordinances which does not have a third buoy grandfather clause. Recommending approval for a third buoy would be in direct conflict with the current TRPA Code of Ordinances. On August 28, 2015, staff wrote to the Applicant advising staff would not recommend more than two buoys in the new lease because of the conflict with TRPA’s current code. The Applicant removed the third buoy in September 2015.
6. Staff recommends the Commission authorize two existing mooring buoys and the existing pier to be consistent with the current TRPA Code of Ordinances. Staff recommends the Commission deny authorization for the third mooring buoy.

CALENDAR ITEM NO. **C15** (CONT'D)

7. 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 protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
8. The 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.

9. 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

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's 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.

CALENDAR ITEM NO. **C15** (CONT'D)

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 issuance of a General Lease – Recreational Use to John Brockway Metcalf beginning April 5, 2016, for a term of 10 years, for the use and maintenance of an existing pier and two 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 \$1,277 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Deny authorization for a third mooring buoy.

EXHIBIT A

W 21450

LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 6 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, and catwalk lying adjacent to those parcels as described in Exhibit “A” of that Grant Deed recorded October 11, 2013 as Document 2013-0052615 of 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.

PARCELS 2 & 3 – BUOYS

Two (2) circular parcels of land, being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared July 23, 2015 by the California State Lands Commission Boundary Unit.



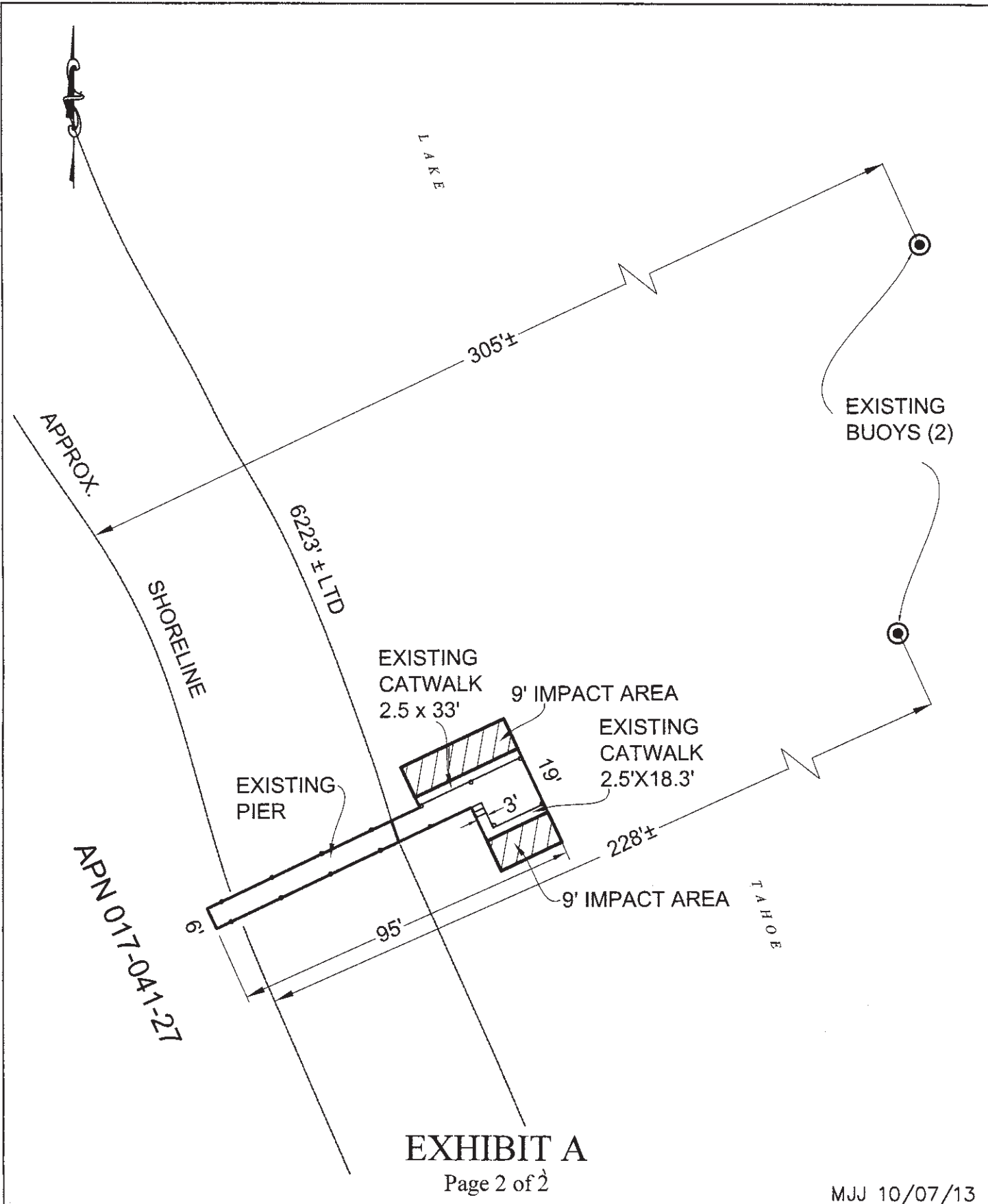


EXHIBIT A

MJJ 10/07/13

LAND DESCRIPTION PLAT
W 21450, METCALF
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



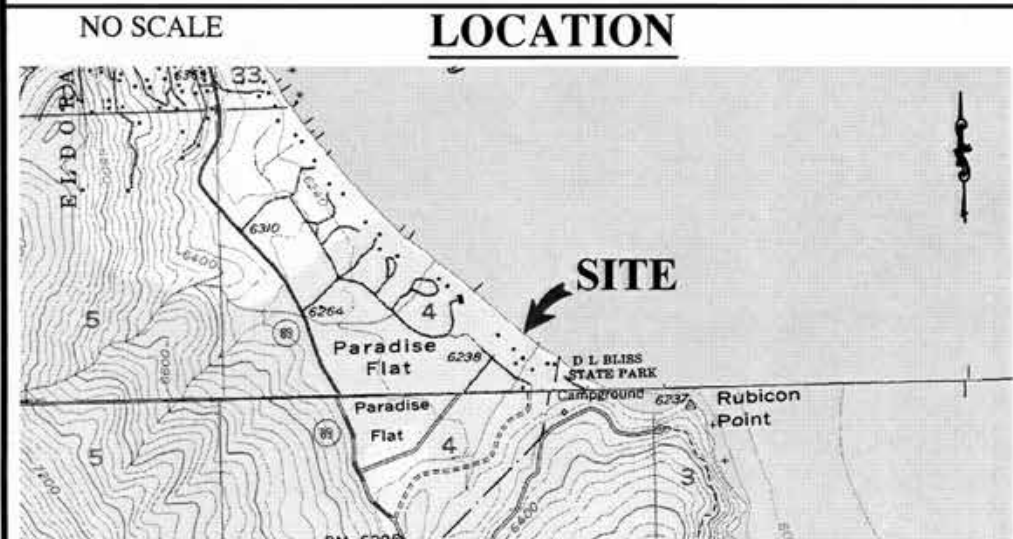
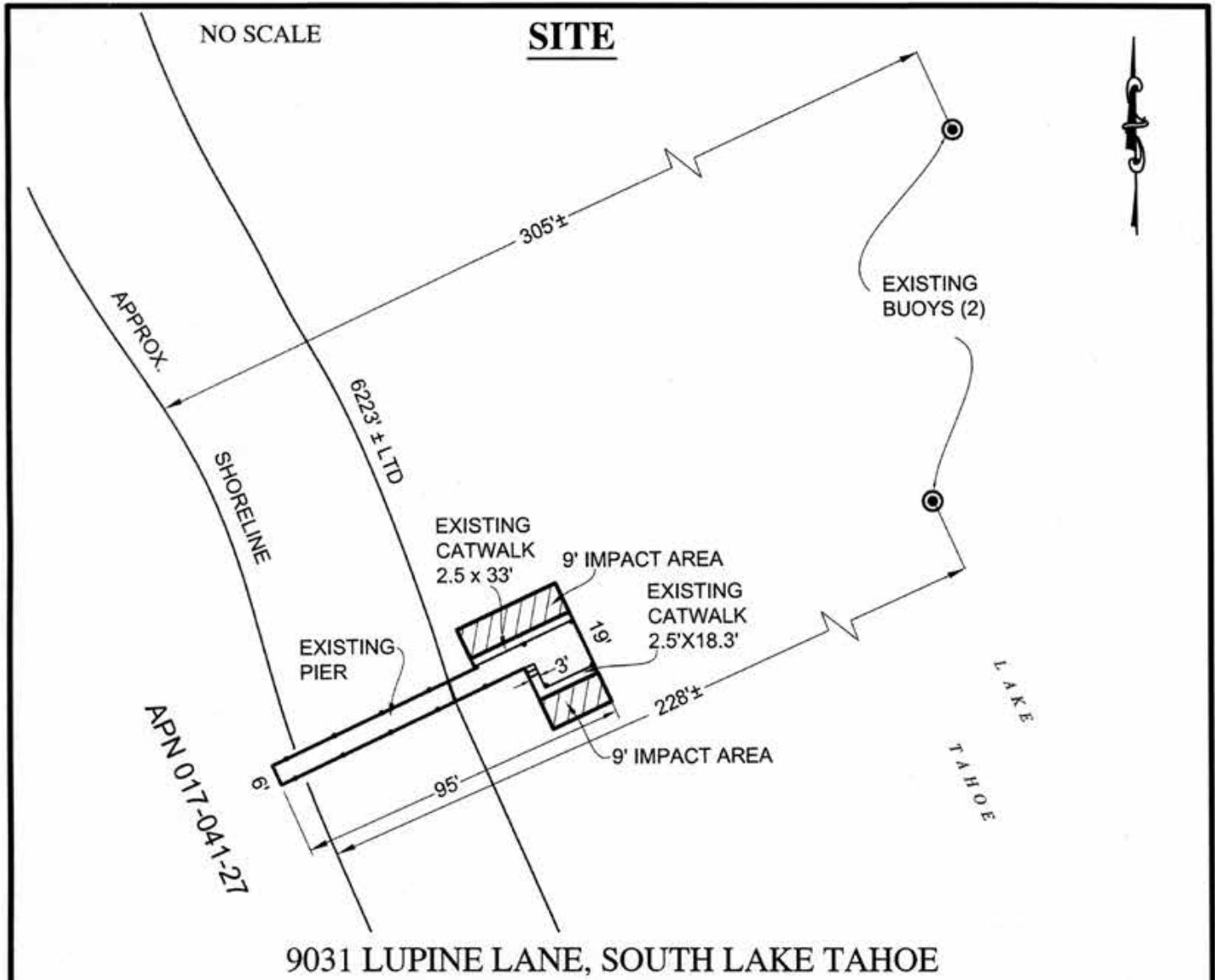


Exhibit B
 W 21450
 METCALF
 APN 017-041-27
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



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.