

**CALENDAR ITEM
C01**

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06/28/16
PRC 3554.1
M. J. Columbus

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Andrew Mackenzie, as Trustee of the Mackenzie Family 1994 Trust; Mary Louise Banta, as Trustee of the Mary Louise Banta 1997 Trust; R. Alan Cotton and Cynthia A. Cotton, Trustees of the Cotton Family Revocable Trust dated December 20, 2001; and Michael Griffus and Melissa Griffus, Trustees of the Michael and Melissa Griffus Trust dated January 14, 2002

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5758 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse, boat lift, sundeck with stairs, and two mooring buoys.

LEASE TERM:

10 years, beginning May 1, 2016.

CONSIDERATION:

\$2,452 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.

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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.

The lease contains provisions stating that the existing sundeck with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing sundeck cost more than 50 percent of the base value of the sundeck, then the sundeck with stairs must be removed from the lease premises.

STAFF ANALYSIS AND RECOMMENDATION:

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:

With the exception of the sundeck, the subject facilities are 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).

The subject facilities have existed for many years at this location. The pier is built on pilings, meaning the public may navigate or walk next to, and at certain water levels, under the pier. The sundeck is built onto the existing boathouse and does not expand the footprint of the pier. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The sundeck with stairs is not associated with traditional trust uses. While new sundecks are generally not favored, sundecks that have been in place for years have been permitted if, as is the case in this instance, they do not significantly interfere with trust activities. However, the lease contains provisions that the sundeck may not be expanded nor rebuilt if substantially destroyed.

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

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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 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.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On June 23, 2011, the Commission authorized a General Lease – Recreational Use to Andrew Mackenzie, as Trustee of the Mackenzie Family 1994 Trust; Mary Louise Banta, as Trustee of the Mary Louise Banta 1997 Trust; R. Alan Cotton and Cynthia A. Cotton, Trustees of the Cotton Family Revocable Trust dated December 20, 2001; and Michael Griffus and Melissa Griffus, Trustees of the Michael and Melissa Griffus Trust dated January 14, 2002. That lease expired on April 30, 2016. The Applicant is now applying for a General Lease – Recreational Use.
3. 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.
4. 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.

5. 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

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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 at this time, 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:

Authorize issuance of a General Lease – Recreational Use to Andrew Mackenzie, as Trustee of the Mackenzie Family 1994 Trust; Mary Louise Banta, as Trustee of the Mary Louise Banta 1997 Trust; R. Alan Cotton and Cynthia A. Cotton, Trustees of the Cotton Family Revocable Trust dated December 20, 2001; and Michael Griffus and Melissa Griffus, Trustees of the Michael and Melissa Griffus Trust dated January 14, 2002, beginning May 1, 2016, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse, boat lift, sundeck with stairs, 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 \$2,452 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3554.1

LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 2 fractional Section 15, 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 & BOATHOUSE

All those lands underlying an existing pier, boathouse, sundeck, stairs and catwalk adjacent to that parcel described in Exhibit “A” in that Trust Transfer Deed recorded February 19, 2002 in Document 2002-0017660 of Official Records of said County.

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

PARCEL 2, 3 – BUOYS (2)

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

Accompanying plat is hereby made part of this description

END OF DESCRIPTION

Prepared April 15, 2016 by the California State Lands Commission Boundary Unit.



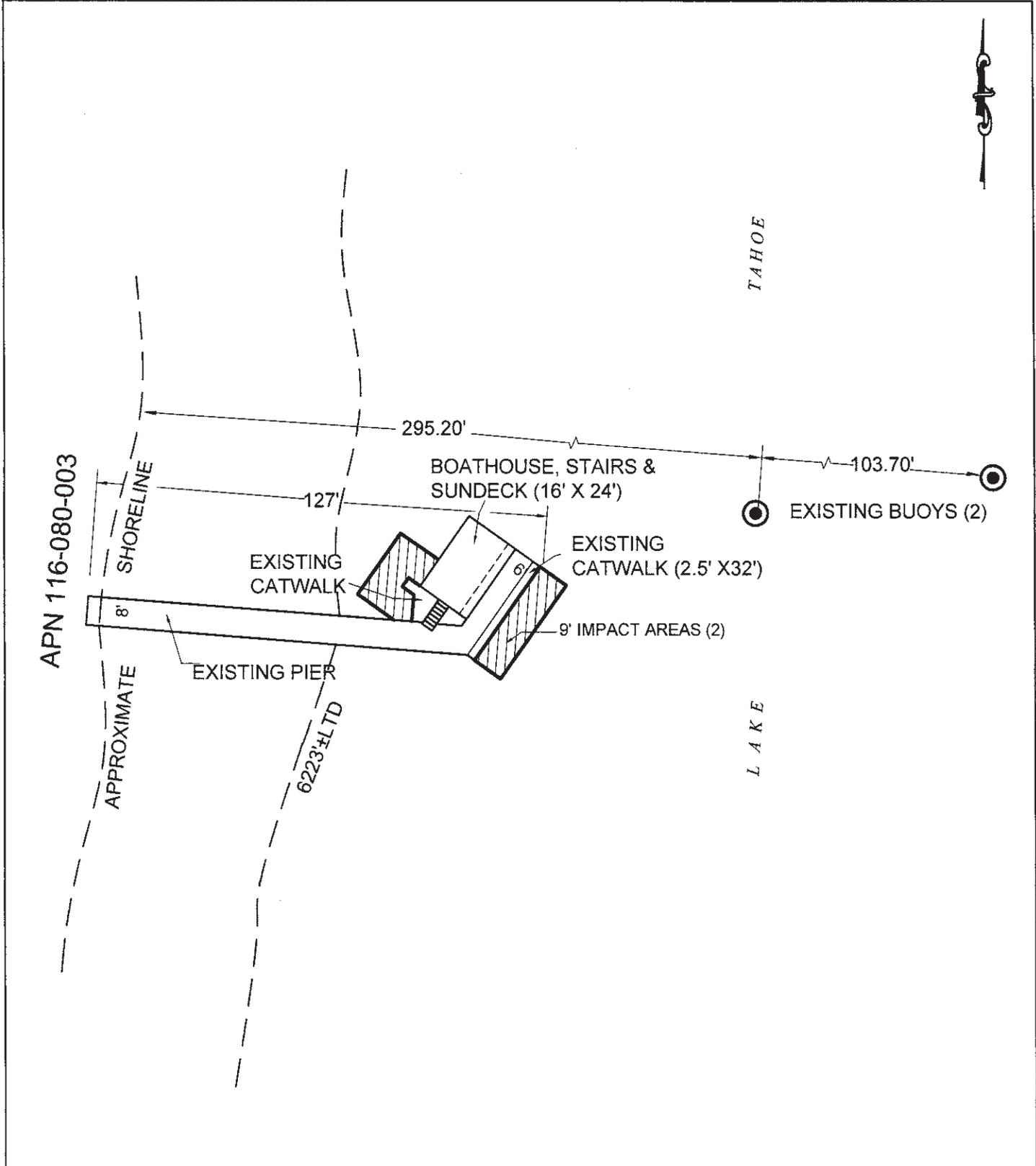


EXHIBIT A

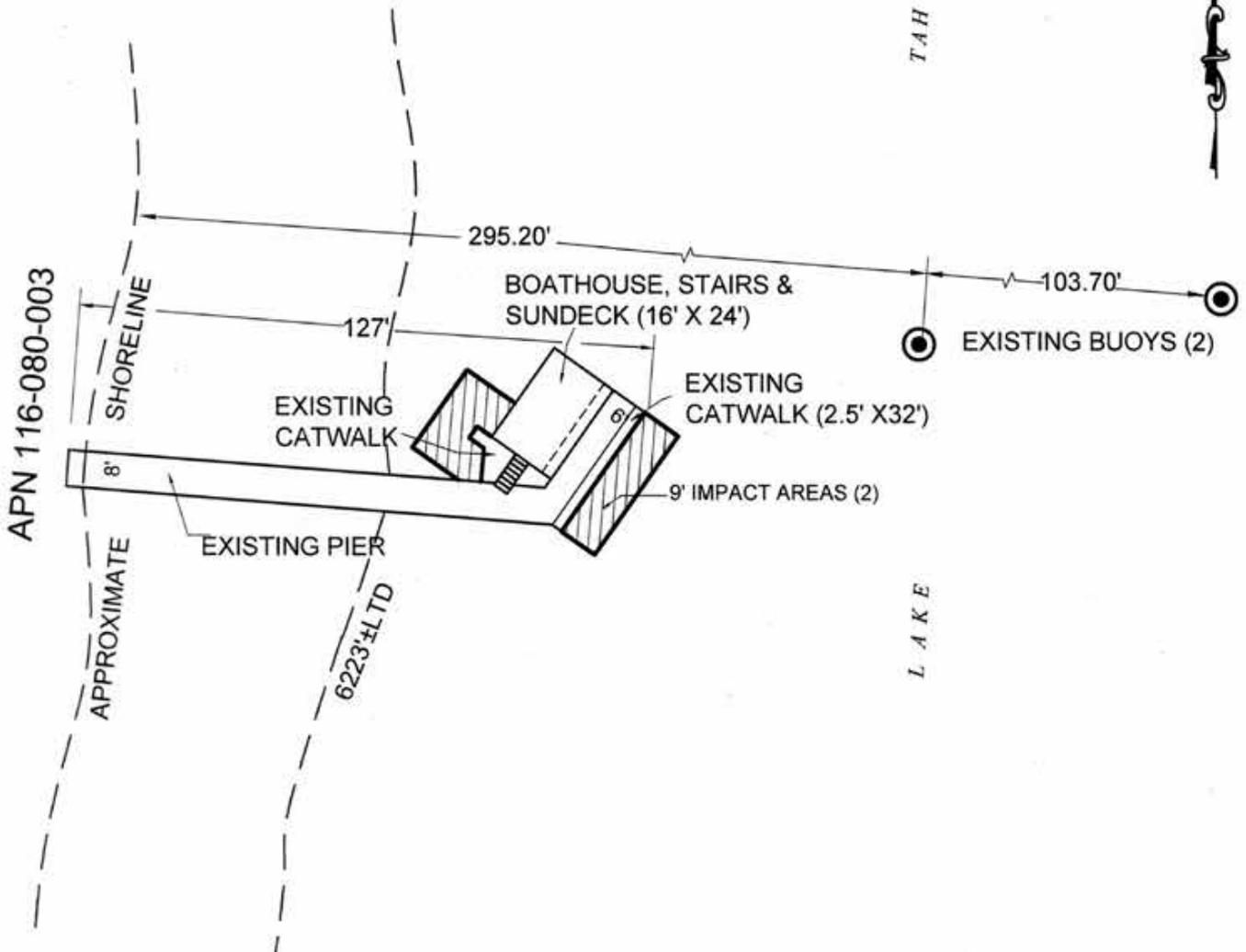
LAND DESCRIPTION PLAT
 PRC 3554.1, COTTON, ET AL.
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



5758 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 3554.1
 COTTON, ET AL.
 APN 116-080-003
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJJ 04/11/2016