

**CALENDAR ITEM
C09**

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10/13/16
PRC 8951.1
M. Schroeder

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

LESSEE/APPLICANT:

Richard P. Filson and Ann M. Filson, Trustees of the Filson Family Revocable Trust dated September 19, 2001; Mark G. Marshall; Bryant C. Blewett and Ellen E. Marshall, Trustees of the Blewett-Marshall Revocable Trust dated December 12, 2007; Molly C. Marshall; and Paul A. Marshall

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 8361 Meeks Bay Avenue, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of one existing mooring buoy previously authorized by the Commission and use and maintenance of an existing pier and one mooring buoy not previously authorized by the Commission.

LEASE TERM:

10 years, beginning October 13, 2016.

CONSIDERATION:

\$1,103 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

Other:

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

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Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such authorization within the time limit, they may be required to 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.

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:

On October 27, 2011, the Commission authorized a Recreational Pier Lease to Richard P. Filson and Ann M. Filson, Trustees of the Filson Family Revocable Trust dated September 19, 2001; Mark G. Marshall; Bryant C. Blewett and Ellen E. Marshall, Trustees of the Blewett-Marshall Revocable Trust dated December 12, 2007; Molly C. Marshall; and Paul A. Marshall for one existing mooring buoy ([Calendar Item C03, October 27, 2011](#)). That lease will expire on October 26, 2021.

The Lessee/Applicant has applied to terminate the existing lease and is requesting a General Lease – Recreational Use for the continued use and maintenance of the one existing mooring buoy previously authorized by the Commission as well as an existing pier and one existing mooring buoy not previously authorized by the Commission. The Lessee/Applicant's pier and two mooring buoys have been in Lake Tahoe for many years, but the pier and other mooring buoy had not previously been brought under lease. Staff became aware of the existence of the pier at the time of the issuance of the Recreational Pier Lease, but did not believe it extended out onto sovereign land. Staff has since determined a portion of the pier is waterward of elevation 6,223 feet, Lake Tahoe Datum and is therefore within the Commission's leasing jurisdiction.

The Lessee/Applicant advised the additional mooring buoy was installed 30 years ago, but the Lessee did not include the mooring buoy in the prior lease application as the Lessee believed only mooring buoys permitted by TRPA could be brought under lease with the Commission. The previously-

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authorized buoy was permitted by TRPA, but the other buoy was not because the Lessee/Applicant could not provide evidence that it had existed prior to 1972 as specified in TRPA's Shorezone Ordinance. Staff reviewed historical photographic evidence and it appears, based on the available evidence, the additional mooring buoy has existed for many years. The subject structures are privately owned and maintained. The Lessee/Applicant owns the upland adjoining the lease premises.

The pier and buoys facilitate recreational boating. 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. The immediate area of the existing pier is steeply sloped and rocky with large boulders, which limit public access along the Public Trust easement. 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, 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.

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 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

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promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

2. 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).

3. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of the 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.

4. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is 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 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).

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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 Public Trust needs and values at this location, at this time, or for the foreseeable term of the lease, and 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 October 12, 2016, of Lease No. PRC 8951.9, a Recreational Pier Lease, issued to Richard P. Filson and Ann M. Filson, Trustees of the Filson Family Revocable Trust dated September 19, 2001; Mark G. Marshall; Bryant C. Blewett and Ellen E. Marshall, Trustees of the Blewett-Marshall Revocable Trust dated December 12, 2007; Molly C. Marshall; and Paul A. Marshall.
2. Authorize issuance of a General Lease – Recreational Use to Richard P. Filson and Ann M. Filson, Trustees of the Filson Family Revocable Trust dated September 19, 2001; Mark G. Marshall; Bryant C. Blewett and Ellen E. Marshall, Trustees of the Blewett-Marshall Revocable Trust dated December 12, 2007; Molly C. Marshall; and Paul A. Marshall; beginning October 13, 2016, for a term of 10 years, for the continued use and maintenance of one existing mooring buoy previously authorized by the Commission and an existing pier and one existing mooring buoy 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 \$1,103, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 8951.1

LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 fractional Section 29, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880 County of El Dorado, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier adjacent to that parcel as described in that Correction Grant Deed recorded March 16, 2011 in Document Number 2011-0012013 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 (2)

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

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared July 18, 2016 by the California State Lands Commission Boundary Unit.



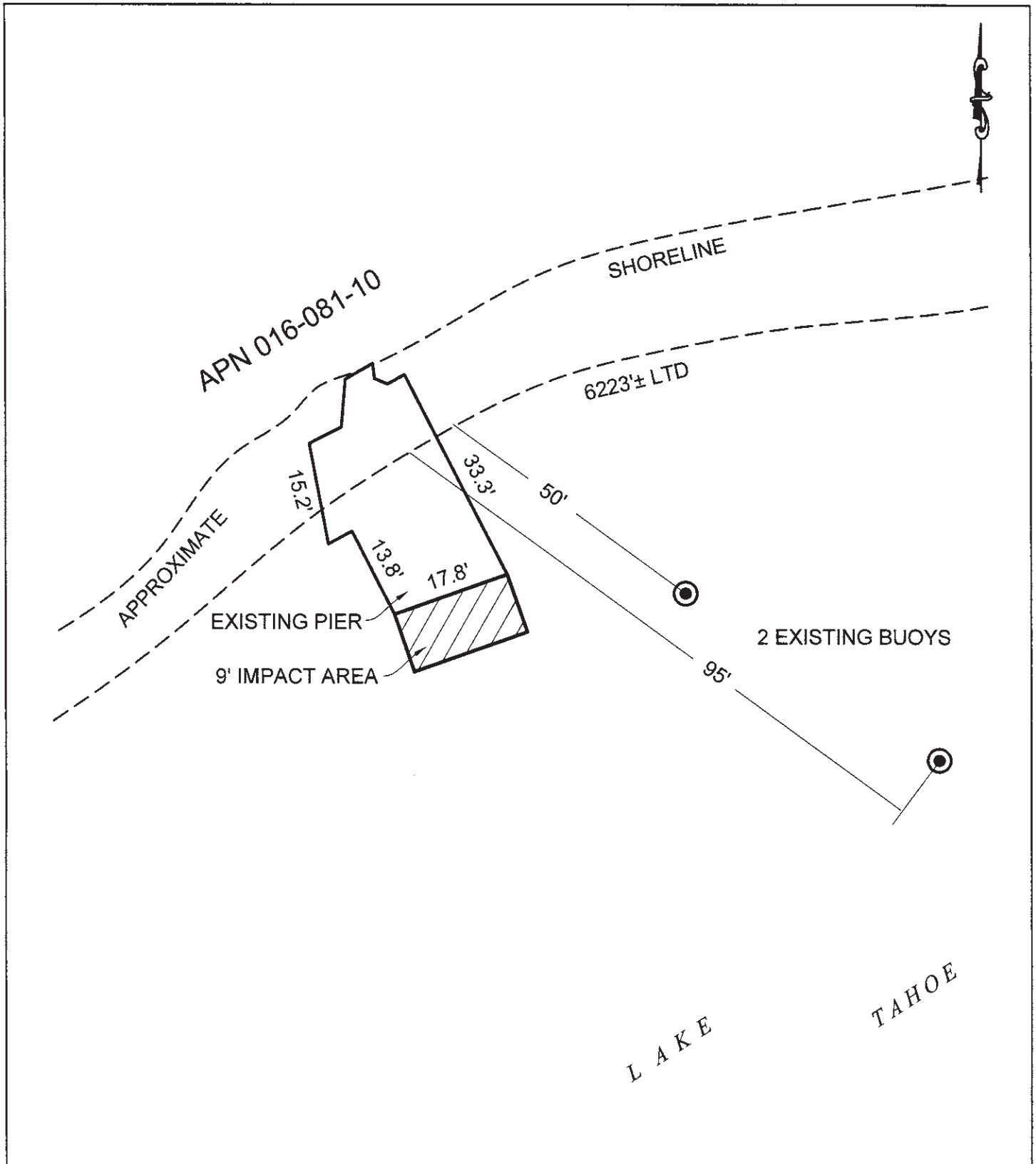


EXHIBIT A

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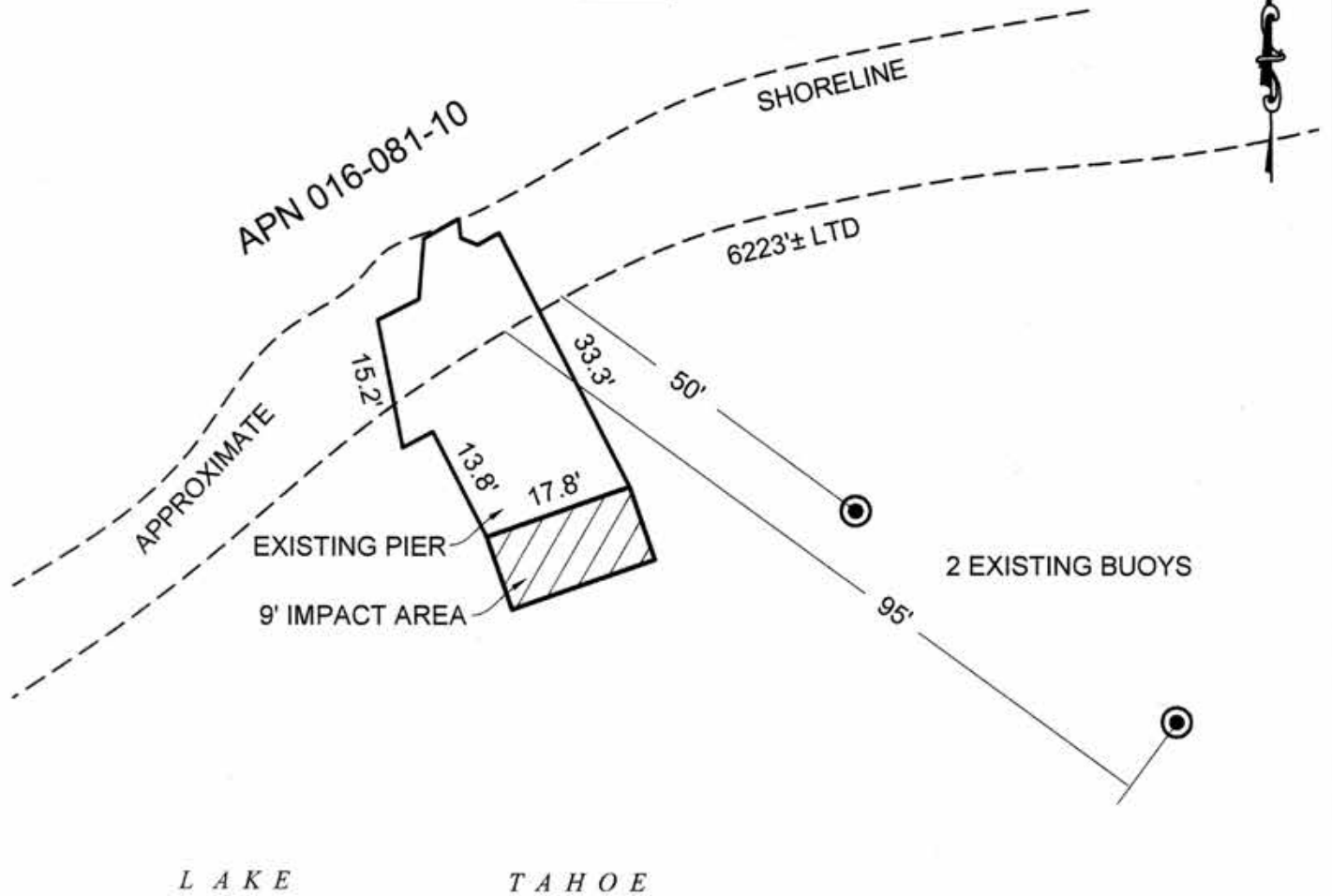
LAND DESCRIPTION PLAT
 PRC 8951.1, MARSHALL ET AL.
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



8361 MEEKS BAY AVENUE, NEAR MEEKS BAY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8951.1
 MARSHALL ET AL.
 APN 016-081-10
 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.